

10/25/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Keith Allred

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL)	
CERAMICS, INC. Dba GLIDEWELL)	
LABORATORIES,)	
)	
)	Case No.
Plaintiff/Counter-Defendant,)	SACV11-01309-DOC
)	(ANx)
vs.)	
)	
Keating Dental Arts, INC.,)	
)	
)	
Defendant/Counter-Plaintiff.)	
_____)	

DEPOSITION OF KEITH ALLRED
TAKEN THURSDAY, OCTOBER 25, 2012
IRVINE, CALIFORNIA

Reported by Lisa Moskowitz, CSR No. 10816, RPR, CLR

DIGITAL EVIDENCE GROUP
1726 M Street, NW, Suite 1010
Washington, DC 20036
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10/25/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Keith Allred

1	DEPOSITION OF KEITH ALLRED, TAKEN ON	1	E X H I B I T S (Cont'd)
2	BEHALF OF DEFENDANT/COUNTER-PLAINTIFF, AT	2	NO. PAGE DESCRIPTION
3	9:40 A.M., THURSDAY, OCTOBER 25, 2012, AT	3	Allred 153 Trademark Status and Document
4	2040 MAIN STREET, 14TH FLOOR, IRVINE, CALIFORNIA,	4	Exhibit 126 Retrieval
5	BEFORE LISA MOSKOWITZ, CSR 10816, RPR, CLR.	5	Allred 156 Justia Trademark Search
6		6	Exhibit 127
7	APPEARANCES OF COUNSEL	7	Allred 160 Trademark Opposition, dated
8	FOR THE PLAINTIFF/COUNTER-DEFENDANT:	8	Exhibit 128 2/3/12
9	LEONARD TACHNER PLC	9	Allred 164 Trademark Opposition, dated
10	BY: LEONARD TACHNER	10	Exhibit 129 11/18/11
11	17961 SKY PARK CIRCLE, SUITE 38-E	11	Allred 168 Letter of Protest Memorandum,
12	IRVINE, CALIFORNIA 92614-6364	12	Exhibit 130 dated 12/2/10
13	(949) 752-8525	13	Allred 172 Bruxgard Patent Registration
14	ltachner@aol.com	14	Exhibit 131
15		15	Allred 172 Brux-eze Patent Registration
16	FOR THE DEFENDANT/COUNTER-PLAINTIFF:	16	Exhibit 132
17	KNOBBE, MARTENS, OLSON & BEAR, LLP	17	Allred 172 Bruxcare Patent Registration
18	BY: DAVID G. JANKOWSKI, PH.D.	18	Exhibit 133
19	2040 MAIN STREET, 14TH FLOOR	19	Allred 172 Brux-eze Patent Registration
20	IRVINE, CALIFORNIA 92614	20	Exhibit 134
21	(949) 760-0404	21	Allred 172 Dr. Brux Patent Registration
22	david.jankowski@kmob.com	22	Exhibit 135
		23	Allred 172 Brux-Checker Patent
		24	Exhibit 136 Registration
		25	Allred 172 Bruxcure Trademark Search
		26	Exhibit 137
		27	Allred 172 Brux XXX Trademark Search
		28	Exhibit 138
		29	
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1	E X H I B I T S (Cont'd)	1	that didn't have anything specifically to do with,
2	NO. PAGE DESCRIPTION	2	for instance, making a crown, some kind of
3	Allred 261 Notice of Trademark	3	business matter. But not necessarily a legal
4	Exhibit 151 Infringement E-mail, dated	4	matter.
5	9/26/12	5	Q. Okay. Is your title also general
6		6	counsel?
7	EXHIBITS REFERENCED	7	A. Yes.
8	NO. PAGE DESCRIPTION	8	Q. Okay. Do you have any other titles other
9	Exhibit 2 11 Corrected Notice of	9	than director of professional services and general
10	Deposition, dated 9/11/12	10	counsel?
11	Exhibit 29 187 Letter from Robin Bartolo,	11	A. I'm the secretary.
12	dated 8/9/11	12	Q. Any other titles?
13	Exhibit 37 59 BruxZir Sales Records	13	A. No.
14	Exhibit 40 71 List of Account Numbers	14	Q. Have you ever been deposed before?
15	Exhibit 93 264 Glidewell BruxZir Solid	15	A. No.
16	Zirconia Website	16	Q. Let me go over a few ground rules about
17	Exhibit 97 265 Glidewell BruxZir Milling	17	the deposition process here and help us understand
18	Blanks Website	18	what's going to happen today.
19	Exhibit 98 266 Glidewell BruxZir Mill	19	First of all, do you understand the oath
20	Website	20	that the court reporter just administered to you?
21	Exhibit 99 267 Glidewell Authorized BruxZir	21	A. Yes.
22	Solid Zirconia Laboratories	22	Q. Although this deposition is being taken
	Website		
	Page 6		Page 8
1	KEITH ALLRED,	1	in a conference room in the law offices of Knobbe,
2	having been first duly sworn,	2	Martens, Olson & Bear in Irvine, California, it
3	was examined and testified as follows:	3	has the same force and effect as if you were
4		4	testifying in a court of law before a judge.
5	EXAMINATION	5	Do you understand that?
6	BY MR. JANKOWSKI:	6	A. Yes.
7	Q. Good morning. My name, again, is David	7	Q. I'm going to be asking you questions, and
8	Jankowski. I'm an attorney representing Keating	8	you are going to be providing answers to my
9	Dental Arts, the defendant in this lawsuit.	9	questions. You must answer truthfully.
10	Could you please state your name for the	10	Do you understand that?
11	record?	11	A. Yes.
12	A. Keith Allred.	12	Q. This deposition is being recorded by the
13	Q. And Glidewell Laboratories is your	13	court reporter. She can only record actual words;
14	current employer; correct?	14	so please answer with spoken words rather than a
15	A. Yes.	15	nod or other nonverbal response.
16	Q. What's your current title?	16	Do you understand?
17	A. Director of professional services. Also	17	A. Thumbs up don't work.
18	the in-house attorney.	18	Q. Correct.
19	Q. And so professional services is a way of	19	Please wait until I've completed a
20	referring to legal services?	20	question before you begin your answer because the
21	A. No. It would be something I could use if	21	court reporter cannot capture what we say if we
22	I was communicating with anyone about any matter	22	talk over one another. Okay?
	Page 7		Page 9

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1 A. Okay.

2 Q. If I ask a question and it is unclear to

3 you in some way, please let me know and I'll try

4 to address it. If you do not ask for

5 clarification, I will assume that you understand

6 what I am asking.

7 Do you understand?

8 A. Yes.

9 Q. From time to time, your attorney,

10 Mr. Tachner, may be stating objections, for the

11 record. Unless he instructs you not to answer a

12 question, you must still answer my question.

13 Do you understand that?

14 A. Yes.

15 Q. If you would like to take a break at any

16 time during the deposition, simply say so and

17 we'll take a break at the next convenient stopping

18 point.

19 Is that fine?

20 A. That's good.

21 Q. I do request we not take breaks while a

22 question is pending.

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1 A. Okay.

2 Q. Are you taking any prescription

3 medication or other drugs that may impair your

4 ability to testify truthfully today?

5 A. No.

6 Q. Is there any reason you can't give

7 truthful testimony here today?

8 A. No reason.

9 Q. Okay. Let me just put in front of you

10 what has been previously marked as Exhibit 2.

11 I'll have you take a quick look at that document.

12 Mr. Allred, have you seen this document

13 before?

14 A. Corrected notice of deposition?

15 Q. Correct.

16 A. Is this for the person most

17 knowledgeable?

18 Q. Well, basically. It's a deposition

19 pursuant to Federal Rule of Civil Procedure

20 30(b)(6). So it's a deposition of Glidewell, the

21 entity, and Glidewell designates one or more

22 persons to provide testimony on the topics.

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1 A. I understand that, yes.

2 Q. And, in fact, you're aware that Mr. Jim

3 Shuck gave testimony on some of these topics a few

4 weeks ago; correct?

5 A. Yes.

6 Q. And you're here to testify today to also

7 help us out here understand information associated

8 with these topics.

9 You're familiar with that?

10 A. Yes.

11 Q. Okay. And you know what? I was going to

12 do this later, but let's go over your background a

13 little bit before we get into this.

14 You're an attorney; correct?

15 A. Yes.

16 Q. Can you briefly describe what is your

17 educational background?

18 A. I went to San Diego State University and

19 the University of San Diego.

20 Q. And so you got your undergraduate degree

21 at San Diego State?

22 A. Yes.

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1 Q. And what was your major?

2 A. Finance and business law and a master's

3 degree in business administration.

4 Q. So you have two separate degrees from San

5 Diego State, a bachelor's and an MBA?

6 A. Yes.

7 Q. And what year did you receive your

8 bachelor's degree?

9 A. '72.

10 Q. The early 1970s?

11 A. Yes.

12 Q. And then do you recall what year you

13 received your MBA?

14 A. Ultimately, I will. Let me see. I'm

15 going to go '77. It strikes me as right.

16 Q. You didn't go straight through and get an

17 MBA right after your undergraduate degree?

18 A. Not immediately. I didn't just go to

19 school full-time either.

20 Q. Okay. When did you start studying at San

21 Diego State?

22 A. 1969.

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1 Q. When did you receive your law degree from
2 University of San Diego?
3 A. It was December of '81, I believe, is
4 when it would be on their records or February of
5 '82, something like that. I remember the bar in
6 February of '82. I know that.
7 Q. Now, JD degrees aren't normally conferred
8 in December time of year. Were you on a different
9 program?
10 A. I'm not quite sure. It seems like I got
11 it in '81, but I get continual communications from
12 them, and it seems like I'm under the heading of
13 '82. I'm not quite sure how they figure that.
14 Q. When did you start studying law at
15 University of San Diego?
16 A. 1979 in their evening program.
17 Q. Okay.
18 A. I was employed full-time.
19 Q. Where were you employed at that time?
20 A. General Dynamics at that time.
21 Q. I actually used to work at General
22 Dynamics down in San Diego.

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1 A. I worked in Kearny Mesa.
2 Q. That was while I was in college.
3 What was your position at General
4 Dynamics?
5 A. Master scheduler.
6 Q. What time period did you work at General
7 Dynamics?
8 A. Let's see, I guess that was till -- well,
9 before '79. I don't know exactly when and until
10 about '81 or so.
11 Q. So about three years?
12 A. Yeah.
13 Q. And did you work somewhere before General
14 Dynamics?
15 A. Yes.
16 Q. Where did you work before General
17 Dynamics?
18 A. Immediately before that, I think it would
19 be Pacific Telephone. Downtown San Diego.
20 Q. What was your position at Pacific
21 Telephone?
22 A. It was a statistical clerk in the

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1 division office there.
2 Q. What does a statistical clerk do?
3 A. It's kind of hard to describe, but it was
4 pretty much keeping performance statistics on all
5 the central offices of California.
6 Q. And so statistics on financial
7 performance?
8 A. Not really, no. It's performance
9 statistics of the machinery and equipment and the
10 services provided.
11 Q. Okay.
12 A. More of an electronic thing.
13 Q. Okay. And over what time period did you
14 work at Pacific Telephone?
15 A. I think that was a couple years.
16 Q. So you started there in the mid-'70s?
17 A. Yeah.
18 Q. And did you work somewhere before Pacific
19 Telephone?
20 A. I did, yeah.
21 Q. Where did you work?
22 A. I worked at La Jolla Village apartments.

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1 Q. What did you do there?
2 A. I was an assistant manager.
3 Q. And do you recall what time period that
4 you worked at La Jolla Village apartments?
5 A. I think I started about 1971. I'm not
6 sure exactly.
7 Q. So that's while you were still in
8 college?
9 A. Yeah, it's what I was doing during the
10 days and nights. It was kind of a flexible
11 schedule. Mainly it was nighttime but maybe one
12 or two days during the week during the day.
13 Q. And so you graduated from San Diego State
14 with a degree, I think you said, in business
15 finance?
16 A. It's called finance and business law.
17 That's the name of the degree.
18 Q. Finance and business law. Okay. And
19 so -- and the job you had at La Jolla Village
20 apartments was not related to the finance side of
21 it, was it?
22 A. No, it was property management.

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<p>1 Q. And you went straight from La Jolla</p> <p>2 Village apartments to Pacific Telephone?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And straight from Pacific Telephone to</p> <p>5 General Dynamics?</p> <p>6 A. Yes.</p> <p>7 Q. That gets us up to about 1981. Where did</p> <p>8 you work after General Dynamics?</p> <p>9 A. I had some part-time jobs because I</p> <p>10 switched over to full-time daytime in the law</p> <p>11 school. So I had a lot of different things.</p> <p>12 Accountemps would be one of them.</p> <p>13 Q. When after General Dynamics did you first</p> <p>14 have full-time employment with somebody?</p> <p>15 A. That would be -- well, I did work</p> <p>16 full-time as a temporary basis even though it was</p> <p>17 through -- temporary was really contractors. So</p> <p>18 there was several of those. You mean for a</p> <p>19 company to actually employ me as an employee?</p> <p>20 Q. Correct.</p> <p>21 A. I think that would probably be Coltene.</p> <p>22 Q. Can you spell that?</p> <p style="text-align: right;">Page 18</p>	<p>1 A. I guess about 1989 or maybe '88. I'm not</p> <p>2 quite sure.</p> <p>3 Q. And when your employment at Coltene,</p> <p>4 Inc., ended, where did you go from there?</p> <p>5 A. I opened up my own law practice.</p> <p>6 Q. Where was your law practice located?</p> <p>7 A. I was just out of my own home.</p> <p>8 Q. What city?</p> <p>9 A. In Cardiff, California.</p> <p>10 Q. And so that would have been in 1990?</p> <p>11 A. Yeah.</p> <p>12 Q. What kind of law did you practice?</p> <p>13 A. Condominium law.</p> <p>14 Q. Why did you transition from Coltene,</p> <p>15 Inc., to your own law practice at that time?</p> <p>16 A. Well, it worked out pretty good. That</p> <p>17 business sold in a way. Actually it was the</p> <p>18 reverse way around. Coltene purchased Whaledent</p> <p>19 and Whaledent sells through dealers, and they</p> <p>20 eliminated the company that was essentially</p> <p>21 selling direct, and so it was a chance to start</p> <p>22 something new during the depression.</p> <p style="text-align: right;">Page 20</p>
<p>1 A. C-o-l-t-e-n-e, Coltene, Inc.</p> <p>2 Q. And what's the business of Coltene, Inc.?</p> <p>3 A. They were in the business of</p> <p>4 manufacturing dental materials, primarily</p> <p>5 impression material at the time I started there is</p> <p>6 what they were known for. They're a Swiss</p> <p>7 company, and they were selling direct in the</p> <p>8 United States; so it was something new for them.</p> <p>9 Q. What was your position at Coltene, Inc.?</p> <p>10 A. I was the controller.</p> <p>11 Q. And what year did you begin working at</p> <p>12 Coltene?</p> <p>13 A. 1985.</p> <p>14 Q. And how long did you work at Coltene,</p> <p>15 Inc.?</p> <p>16 A. Till 1990.</p> <p>17 Q. And you were the controller that whole</p> <p>18 time?</p> <p>19 A. No, at the end, I was the president of</p> <p>20 that company.</p> <p>21 Q. And when did your title change to</p> <p>22 president?</p> <p style="text-align: right;">Page 19</p>	<p>1 Q. How long were you working as your own law</p> <p>2 practice?</p> <p>3 A. Until 1996.</p> <p>4 Q. And that whole time you were practicing</p> <p>5 condominium law?</p> <p>6 A. Well, it's one of my specialties, but</p> <p>7 there was also property law. I handled a divorce,</p> <p>8 brought a lawsuit, this and that, quite a few</p> <p>9 different things.</p> <p>10 Q. I asked you earlier if you've ever been</p> <p>11 deposed. I guess I should ask you have you taken</p> <p>12 depositions of witnesses?</p> <p>13 A. Yeah.</p> <p>14 Q. How many depositions have you taken?</p> <p>15 A. I would say I've only taken one. I've</p> <p>16 participated in more than one, but I remember</p> <p>17 asking questions in one.</p> <p>18 Q. And the other ones you were defending</p> <p>19 witnesses?</p> <p>20 A. I was there with -- representing a</p> <p>21 company as the company's attorney that had hired</p> <p>22 an attorney to do something or another. I don't</p> <p style="text-align: right;">Page 21</p>

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<p>1 know that we were defendant or plaintiff. I'd</p> <p>2 have to think about that.</p> <p>3 Q. But you were participating in the</p> <p>4 deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. How many depositions have you</p> <p>7 participated in?</p> <p>8 A. Oh, probably more than five.</p> <p>9 Q. Okay. Was that back in this time frame</p> <p>10 in the 1990s?</p> <p>11 A. No, I would say since '96. I was never</p> <p>12 part of any depositions prior to working for the</p> <p>13 company I work for now.</p> <p>14 Q. Okay. So as part of your law practice</p> <p>15 between 1990 and '96, you weren't involved in</p> <p>16 depositions then?</p> <p>17 A. No.</p> <p>18 Q. So you mentioned condominium law,</p> <p>19 property law, family law. Any other areas of law</p> <p>20 that you practiced?</p> <p>21 A. Well, I guess I can list them all as part</p> <p>22 of that. Condominium law, for instance, is</p> <p style="text-align: right;">Page 22</p>	<p>1 that from the very beginning, though, I've been an</p> <p>2 attorney there from the very beginning.</p> <p>3 Q. Okay. So at least at some point you took</p> <p>4 on the title general counsel?</p> <p>5 A. Yeah, definitely at some point.</p> <p>6 Q. How about secretary? When did you take</p> <p>7 on that title?</p> <p>8 A. I think that was probably about six years</p> <p>9 ago.</p> <p>10 Q. So roughly 2006?</p> <p>11 A. Uh-huh.</p> <p>12 MR. TACHNER: Yes? You have to mouth the</p> <p>13 word.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. JANKOWSKI:</p> <p>16 Q. Excuse me. How is it that you first</p> <p>17 developed a working relationship with Glidewell</p> <p>18 Laboratories?</p> <p>19 A. I think the first thing I ever did</p> <p>20 professionally for Glidewell Laboratories was</p> <p>21 filing a trademark.</p> <p>22 Q. And when was that?</p> <p style="text-align: right;">Page 24</p>
<p>1 handling liens. I've actually filed foreclosure</p> <p>2 on properties, contract matters. I was also a</p> <p>3 realtor. I had a broker's license.</p> <p>4 Q. And what did you do in 1996 when you --</p> <p>5 well, let me ask you: In 1996, did you stop that</p> <p>6 law practice?</p> <p>7 A. Yes.</p> <p>8 Q. And what happened at that point?</p> <p>9 A. Well, I was hired on a full-time basis as</p> <p>10 director of professional services.</p> <p>11 Q. By Glidewell?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And so you've been working</p> <p>14 consistently from 1996 until today at Glidewell as</p> <p>15 the director of professional services?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 A. And before that, I did a few things for</p> <p>19 them too. Filed a trademark.</p> <p>20 Q. Okay. Has your title been general</p> <p>21 counsel the whole time as well?</p> <p>22 A. I don't know that it's really been called</p> <p style="text-align: right;">Page 23</p>	<p>1 A. Well, it would have been before '96.</p> <p>2 Q. You don't recall the year, though?</p> <p>3 A. I don't recall it, but it would be easy</p> <p>4 to see because I could look up the trademark.</p> <p>5 Q. What was the trademark in?</p> <p>6 A. Playsafe was the name.</p> <p>7 Q. P-l-a-y-s-a-f-e?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Is that all as one word?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Now, you hadn't been practicing</p> <p>12 trademark law prior to that; is that correct?</p> <p>13 A. That's true.</p> <p>14 Q. So how is it you came to be asked by</p> <p>15 Glidewell to file a trademark application?</p> <p>16 A. Just a well-rounded individual.</p> <p>17 Q. But how did they find you to do this</p> <p>18 particular task?</p> <p>19 A. Well, I know the person that works there</p> <p>20 in the marketing department.</p> <p>21 Q. Is that Mr. Shuck?</p> <p>22 A. Yes.</p> <p style="text-align: right;">Page 25</p>

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<p>1 Q. So you had a preexisting relationship</p> <p>2 with Mr. Shuck that predated the filing of this</p> <p>3 trademark application?</p> <p>4 A. Yes. We worked at Coltene together.</p> <p>5 Q. So when you were working at Coltene</p> <p>6 between 1985 and 1990, Mr. Shuck was one of the</p> <p>7 people you were working with?</p> <p>8 A. Yeah, for. He was the president of the</p> <p>9 company then.</p> <p>10 Q. So you became president of Coltene in or</p> <p>11 around 1988 or '89?</p> <p>12 A. Yes.</p> <p>13 Q. Did you replace Mr. Shuck as president?</p> <p>14 A. Yes, he left.</p> <p>15 Q. Where did he go from there?</p> <p>16 A. PTC, I think.</p> <p>17 Q. Is that an acronym or what was PTC?</p> <p>18 A. It stands for something.</p> <p>19 Q. That's the name of the company?</p> <p>20 A. Yes.</p> <p>21 Q. And that's a dental company of some type?</p> <p>22 A. Yeah, it is.</p> <p style="text-align: right;">Page 26</p>	<p>1 advertising and marketing; is that right?</p> <p>2 A. Sales and marketing.</p> <p>3 Q. Sales and marketing.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Right. Okay.</p> <p>6 Were there any other projects that</p> <p>7 Glidewell gave you to work on prior to you</p> <p>8 beginning employment there in 1996?</p> <p>9 A. I think there might have been another</p> <p>10 trademark.</p> <p>11 Q. Do you recall what the trademark was?</p> <p>12 A. If it was before that I was actually</p> <p>13 employed there, it would be Silent Nite. That's</p> <p>14 N-i-t-e. Silent Nite.</p> <p>15 Q. What goods or services was the mark</p> <p>16 Silent Nite being used by Glidewell for?</p> <p>17 A. It's a mandibular device, and it's for</p> <p>18 the treatment of snoring and mild to moderate</p> <p>19 sleep apnea.</p> <p>20 Q. I think I understand the name.</p> <p>21 How about Playsafe? What kind of goods</p> <p>22 or services is that mark associated with?</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. What do they make or sell?</p> <p>2 A. They were in the business of selling</p> <p>3 training, and I think they also had a line of</p> <p>4 artificial teeth from a manufacturer in Europe.</p> <p>5 Q. Okay. So basically what happened at some</p> <p>6 point prior to 1996 was you received a phone call</p> <p>7 or some kind of communication from Mr. Shuck</p> <p>8 asking you to file a trademark on behalf of</p> <p>9 Glidewell; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. Had you been working with</p> <p>12 Mr. Shuck in a professional capacity, a business</p> <p>13 capacity, prior to joining Glidewell after he left</p> <p>14 Coltene?</p> <p>15 A. No.</p> <p>16 Q. Do you know when Mr. Shuck joined</p> <p>17 Glidewell?</p> <p>18 A. I don't.</p> <p>19 Q. Okay. But it was before you?</p> <p>20 A. Long time before. I think he's worked</p> <p>21 there more than 20 years.</p> <p>22 Q. And Mr. Shuck is the vice president of</p> <p style="text-align: right;">Page 27</p>	<p>1 A. That is a custom fabricated mouth guard.</p> <p>2 Q. Would that be a mouth guard for use by</p> <p>3 athletes?</p> <p>4 A. Yes.</p> <p>5 Q. I think I understand that name as well.</p> <p>6 Are there any other trademarks that you</p> <p>7 filed for Glidewell before beginning employment</p> <p>8 there in 1996?</p> <p>9 A. I'm not even sure the Silent Nite was</p> <p>10 before. I think it was No. 2.</p> <p>11 Q. Okay.</p> <p>12 A. If one comes to me, I'll let you know,</p> <p>13 but I can't recall right now.</p> <p>14 Q. Okay.</p> <p>15 A. There may have been one before, Capture</p> <p>16 possibly. I'm not sure where they fall in the</p> <p>17 timeline.</p> <p>18 Q. How many trademarks have you filed for</p> <p>19 Glidewell?</p> <p>20 A. Maybe more than 10.</p> <p>21 Q. Okay. Can you name for me the ones you</p> <p>22 recall?</p> <p style="text-align: right;">Page 29</p>

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1 A. Oh, sure. Well, the three I've
2 mentioned.
3 Q. What was the last one you said?
4 A. Capture.
5 Q. Capture. Okay. What kind of product or
6 services is Capture?
7 A. That is polyvinyl impression material.
8 Dental impression material.
9 Q. Okay. What's another one?
10 A. I'll give you a tongue twister. Occlusal
11 Glass. I don't know that it was fourth in line,
12 but it's always been easy to remember for me.
13 Q. Occlusal Glass?
14 A. Occlusal Glass.
15 Q. It sounds scary to have glass in your
16 mouth.
17 Can you think of the others? What are
18 the others?
19 A. Oh, sure. Center Press. Simply Natural
20 Dentures. Inclusive. That's more recent.
21 Chairside. I think there's about three more I
22 can't think of.

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1 Q. Okay. We're up to eight. That's a
2 pretty good number.
3 Does Glidewell also rely on attorneys
4 other than you to file trademarks?
5 A. No.
6 Q. One trademark, I guess, at issue is going
7 to be BruxZir, correct? That's the reason we're
8 sitting here today.
9 A. Yes.
10 Q. So we can add that to the list as well?
11 A. Definitely.
12 Q. The way I've been referring to
13 Glidewell's mark just as a shorthand just so I can
14 say it in a way that I think everybody can
15 understand it and without having me to spell it
16 out each time is I call it BruxZir with a Z. When
17 I say BruxZir with a Z, I mean Glidewell's mark.
18 Specifically, I mean B-r-u-x-z-i-r.
19 A. Okay.
20 Q. When I say that, that's what I'll be
21 referring to.
22 A. Okay.

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1 Q. So BruxZir is one of the marks you filed
2 for them?
3 A. Yes.
4 Q. And, in fact, there's at least two
5 filings for BruxZir; correct? Separate trademark
6 applications that have been filed?
7 A. Well, there's one in Class 10, and
8 there's one in Class 5. Is that what you mean?
9 Q. That's right.
10 A. That's in the United States.
11 Q. Right, right. I'm just asking about the
12 United States.
13 When you say Class 10, what's Class 10?
14 A. That would cover, for instance, a
15 custom-made crown or bridge or inlay or onlay.
16 Q. How about Class 5?
17 A. That would be a material like, in our
18 situation, BruxZir block.
19 Q. I think just yesterday I was questioning
20 Mr. Bartolo, and I've also questioned Mr. Carden.
21 It seems like the material that's sold by
22 Glidewell is referred to as blanks. Have you

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1 heard it referred to that way?
2 A. Yes.
3 Q. So that's what Class 5 is referring to,
4 the blanks material; correct?
5 A. Yes.
6 Q. Okay.
7 A. And colorants too.
8 Q. So Class 5 would include the colorants?
9 A. Yes.
10 Q. Now, there's also, at least the mark
11 BruxZir has been used by Glidewell for a number of
12 other offerings for sale as well; correct? Like
13 milling machines, for example?
14 A. Yes.
15 Q. That won't fall under a Class 10 or
16 Class 5; correct?
17 A. That's correct.
18 Q. Is there a filing for BruxZir for
19 anything other than Class 10 and Class 5?
20 A. Not yet.
21 Q. Okay. Chairside, by the way, I think is
22 the name of an internal publication of Glidewell;

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1 right?
2 A. That's true.
3 Q. Do you recall what class the mark Simply
4 Natural Dentures is associated with?
5 A. What product is it for?
6 Q. Right.
7 A. That was for a denture. They were
8 partial. It would be Simply Natural Dentures.
9 Q. Does it have -- like I said, Class 5 and
10 Class 10 for BruxZir --
11 A. That would be Class 10.
12 Q. That's Class 10.
13 A. Another mark would be BioTemps.
14 Q. And what's BioTemps?
15 A. That is a custom-made provisional
16 restoration.
17 Q. Does that mean a restoration that's
18 designed to not be permanent?
19 A. Correct.
20 Q. Is that also in Class 10?
21 A. Yes.
22 Q. How about Occlusal Glass? What class
Page 34

1 would that be associated with?
2 A. That would be Class 10.
3 Q. What product was that?
4 A. That was a crown. It was made by fusing
5 glass over a metal coping, and it was a particular
6 type of metal coping, and it was a particular type
7 of glass.
8 Q. How about Center Press? What kind of
9 product is that?
10 A. It was going to be. It's nothing we ever
11 actually marketed. It was going to be a
12 nonprecious metal coping system made with powdered
13 metal.
14 Q. I take it that would be in Class 5?
15 A. That would be in Class 5. We also have
16 the mark Prismatic NETPRESS, and that's Prismatic
17 with a K.
18 Q. So it's P-r-i-s-m-a-t-i-k?
19 A. Yes. And we also have Prismatic
20 something press. Thin press.
21 Q. I'm sorry. The first Prismatic press
22 was -- can you repeat the name of that?
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1 A. Well, it's Prismatic Thin Press, and it's
2 Prismatic NETPRESS.
3 Q. Right. Netpress. Okay.
4 What is the Prismatic NETPRESS product?
5 A. That is a block of ceramic that's used to
6 make either all ceramic or pressed to metal
7 ceramic crowns and bridges.
8 Q. That's zirconia, in fact; correct?
9 A. No, it's ceramic. It's glass.
10 Q. This particular one is not zirconia?
11 A. No, it's not.
12 Q. There is a Prismatic zirconia, I think,
13 associated with Glidewell's products as well;
14 correct?
15 A. Well, the company is Prismatic
16 Dentalcraft, Inc., and it makes zirconia blocks.
17 So it does have the Prismatic -- well, clinical
18 zirconia. I believe we have a trademark on that.
19 But that was a product we had, Prismatic clinical
20 zirconia.
21 Q. Right. Sometimes called Prismatic CZ?
22 A. And sometimes called Prismatic CZ,
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1 correct.
2 Q. So Glidewell does have a trademark in
3 that?
4 A. I don't think we have a trademark in
5 that.
6 Q. It's just something that's used as a
7 name?
8 A. That's just a TM. And also has a 510(k).
9 Q. So Prismatic Net Press and Prismatic Thin
10 Press, these are going to be Class 5 filings; is
11 that correct?
12 A. For trademark, yes.
13 Q. Yes.
14 In other words, it's materials?
15 A. It is.
16 Q. Okay. And you just mentioned the use of
17 TM. You understand how in trademark law, there's
18 the circle R concept and the TM concept; correct?
19 A. Yes.
20 Q. Can you tell me your understanding of
21 what those designate?
22 A. Well, I know our circle R trademarks are
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<p>1 registered with the Patent and Trademark Office.</p> <p>2 Q. What does TM mean?</p> <p>3 A. Wouldn't have to use it, I suppose, but</p> <p>4 that's just put out there for the world the fact</p> <p>5 that it's something the company uses to identify</p> <p>6 its goods. When someone sees that, they know who</p> <p>7 the source of the product is.</p> <p>8 Q. They know that the word that "TM" is</p> <p>9 associated with is being associated with the</p> <p>10 company as a trade name of some kind?</p> <p>11 A. Correct.</p> <p>12 Q. What if there's no circle R or no TM?</p> <p>13 Does that designate anything?</p> <p>14 A. It would to me if I saw that and I was</p> <p>15 looking at examples of trademarks to see if other</p> <p>16 people were using it.</p> <p>17 Q. In other words, if there's no circle R or</p> <p>18 no TM, the reader may not interpret that as a</p> <p>19 trade name at all. Is that fair?</p> <p>20 A. I think I would not necessarily jump to</p> <p>21 that conclusion.</p> <p>22 Q. But they're at least -- if they don't see</p> <p style="text-align: right;">Page 38</p>	<p>1 A. That's what mine has.</p> <p>2 Q. The good news for you is that Mr. Shuck</p> <p>3 provided testimony on most of these topics, and so</p> <p>4 we certainly don't need to go through the entire</p> <p>5 list with you. But there were certain topics</p> <p>6 where Mr. Shuck didn't have knowledge and topics</p> <p>7 where he said you were the person who's most</p> <p>8 knowledgeable on it. So I just want to point</p> <p>9 those out to you and see what you do know about</p> <p>10 them.</p> <p>11 A. Okay.</p> <p>12 Q. So if you turn actually to topic 8, for</p> <p>13 example, this is one of the topics that Mr. Shuck</p> <p>14 basically directed us to talk to you about. If</p> <p>15 you could just read topic 8 for me.</p> <p>16 A. Okay. I've read that.</p> <p>17 Q. I'm going to be asking you questions to</p> <p>18 get your understanding or knowledge associated</p> <p>19 with topic 8.</p> <p>20 A. Okay.</p> <p>21 Q. And then likewise kind of a similar topic</p> <p>22 is if you look down at No. 10, "All communications</p> <p style="text-align: right;">Page 40</p>
<p>1 a T -- the point of the TM and circle R is to</p> <p>2 provide notice to the reader; correct?</p> <p>3 A. Correct.</p> <p>4 Q. If it's not there, you're at least not</p> <p>5 getting that notice to the reader?</p> <p>6 A. That's correct.</p> <p>7 Q. So let's go back to Exhibit 2 you've got</p> <p>8 in front of you there. If you turn to the fourth</p> <p>9 page of the document, you'll see there's a</p> <p>10 numbered list under "Topics for Examination."</p> <p>11 Do you see that?</p> <p>12 A. Well, these pages aren't numbered but --</p> <p>13 Q. They're not numbered. I apologize.</p> <p>14 A. What number are we starting at, the</p> <p>15 number 1, "Topics for Examination"?</p> <p>16 Q. Correct. You see the page that says</p> <p>17 "Topics for Examination"?</p> <p>18 A. I do.</p> <p>19 Q. You see there's a series of numbered</p> <p>20 topics, and it actually goes all the way down to</p> <p>21 No. 21. It spans three pages.</p> <p>22 Do you see that?</p> <p style="text-align: right;">Page 39</p>	<p>1 between Glidewell," and it lists various other</p> <p>2 parties, certainly at least some of which kind of</p> <p>3 fall in the category of parties that are using</p> <p>4 brux in their names, things like that.</p> <p>5 I'll be asking questions in connection</p> <p>6 with topic 10.</p> <p>7 A. No. 10, okay.</p> <p>8 Q. And then topic 11 which is</p> <p>9 representations made to the U.S. Patent and</p> <p>10 Trademark Office regarding basically the trademark</p> <p>11 application BruxZir.</p> <p>12 A. Okay.</p> <p>13 Q. And topic 12, "Any and all instances of</p> <p>14 actual, apparent or perceived confusion, mistake,</p> <p>15 deception, or association between the BruxZir mark</p> <p>16 and the KDZ Bruxer, B-r-u-x-e-r, mark. So I'll</p> <p>17 ask you questions about that.</p> <p>18 Topic 13 also gets back to the trademark</p> <p>19 issue of BruxZir, any searches or studies that</p> <p>20 Glidewell's done in connection with that.</p> <p>21 Finally, if you turn the page, you'll see</p> <p>22 topic 20, which is Glidewell's enforcement of the</p> <p style="text-align: right;">Page 41</p>

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<p>1 BruxZir mark, which I believe Mr. Shuck said you'd</p> <p>2 have knowledge on that as well.</p> <p>3 A. No. 20.</p> <p>4 Q. Right.</p> <p>5 A. Which sounds a lot like --</p> <p>6 Q. Yeah, there's overlap.</p> <p>7 A. -- No. 10, I guess.</p> <p>8 Q. Exactly.</p> <p>9 A. Okay.</p> <p>10 Q. The other area that Mr. Shuck was</p> <p>11 questioned about where he had trouble answering</p> <p>12 questions was in connection with financial</p> <p>13 documents that Glidewell had produced in the case,</p> <p>14 and I believe you've been designated to provide</p> <p>15 testimony on the financial documents as well.</p> <p>16 A. Yes.</p> <p>17 Q. In that regard, we have a deposition of</p> <p>18 Mr. Sasaki noticed for tomorrow, and your counsel</p> <p>19 and I have spoken about assuming that you have</p> <p>20 sufficient knowledge of the documents to testify</p> <p>21 knowledgeably about them, we may not need the</p> <p>22 deposition tomorrow.</p> <p style="text-align: right;">Page 42</p>	<p>1 A. They both have the year 2010, and it</p> <p>2 starts at 2009 and ends in 2011. They are balance</p> <p>3 sheet and income statements.</p> <p>4 Q. In fact, each one presents information</p> <p>5 for two consecutive years; correct?</p> <p>6 A. Correct.</p> <p>7 Q. I think what you were just saying was</p> <p>8 they share the year 2010, one for the first</p> <p>9 document, that's the later year, and for the</p> <p>10 second document, that's the earlier year?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And is this a document that you</p> <p>13 participate in the creation of within Glidewell?</p> <p>14 A. It is not.</p> <p>15 Q. But can you confirm for me that this is a</p> <p>16 business record of Glidewell Laboratories that it</p> <p>17 creates in the ordinary course of business?</p> <p>18 A. Yes, and it is audited by a certified</p> <p>19 public accountant.</p> <p>20 Q. And, in fact, this is something that is</p> <p>21 prepared every year by Glidewell, a document like</p> <p>22 this is prepared every year?</p> <p style="text-align: right;">Page 44</p>
<p>1 A. Okay.</p> <p>2 Q. So we'll see how it goes today. In that</p> <p>3 regard, why don't we get to those documents</p> <p>4 because I think I'll get the court reporter to</p> <p>5 mark as Exhibit 118 what's entitled, "Consolidated</p> <p>6 Financial Statements Years Ended December 31,</p> <p>7 2010, and 2009 for James R. Glidewell, Dental</p> <p>8 Ceramics, Inc."</p> <p>9 (Exhibit No. 118 was marked for</p> <p>10 identification.)</p> <p>11 MR. JANKOWSKI: And then I'll have the</p> <p>12 court reporter also mark as Exhibit 119 the same</p> <p>13 document except it's for the years ended</p> <p>14 December 31, 2011 and 2010.</p> <p>15 (Exhibit No. 119 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. JANKOWSKI:</p> <p>18 Q. Mr. Allred, if you could briefly look at</p> <p>19 these exhibits, and have you seen Exhibits 118 and</p> <p>20 119 before?</p> <p>21 A. Yes.</p> <p>22 Q. And what are Exhibits 118 and 119?</p> <p style="text-align: right;">Page 43</p>	<p>1 A. That is correct.</p> <p>2 Q. And that's been true ever since you've</p> <p>3 been at Glidewell?</p> <p>4 A. That has been true. Not this firm</p> <p>5 necessarily.</p> <p>6 Q. When you say "this firm," it's --</p> <p>7 A. I see it's KSJG.</p> <p>8 Q. Right.</p> <p>9 Which is a CPA firm; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And what's your understanding of the</p> <p>12 reason why Glidewell creates these documents?</p> <p>13 A. Well, I think it probably would be</p> <p>14 required to because it does have loans with banks,</p> <p>15 but then you'd have to have some kind of document</p> <p>16 to pay your taxes, of course.</p> <p>17 Q. So these kind of documents would be used</p> <p>18 among other things associated with the tax filings</p> <p>19 of Glidewell; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And if you turn to the page 2 of</p> <p>22 the document, I think they're -- if you turn to</p> <p style="text-align: right;">Page 45</p>

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<p>1 page 2 of both documents?</p> <p>2 A. Oh, both?</p> <p>3 Q. You can turn to both because I think they</p> <p>4 really follow the same structure. And it's</p> <p>5 actually numbered page 2. It's in a little</p> <p>6 deeper. You'll see there's a list of --</p> <p>7 A. Oh, I see that.</p> <p>8 Q. You'll see on page 2 there's a list of</p> <p>9 assets.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. And so this is just a page where</p> <p>13 Glidewell is setting forth assets of the entity;</p> <p>14 correct?</p> <p>15 A. Correct. This is a balance sheet.</p> <p>16 Q. Right.</p> <p>17 And as we've been discussing, it's a</p> <p>18 consolidated balance sheet meaning it's showing</p> <p>19 two consecutive years?</p> <p>20 A. Meaning it's actually comprised of</p> <p>21 several different companies.</p> <p>22 Q. Oh, so consolidated in this context means</p> <p style="text-align: right;">Page 46</p>	<p>1 Q. You did.</p> <p>2 A. So that would be three. The first three</p> <p>3 are California companies. A Nevada company is Las</p> <p>4 Vegas Digital Dental, and that's an LLC. I think</p> <p>5 I'm kind of messing that up a little bit. Smith</p> <p>6 Sterling is actually a fictitious name. It's a</p> <p>7 trademark also. But it's a fictitious name for</p> <p>8 Dentalium Dental Ceramics, Inc., which is the</p> <p>9 Florida company. And that owns LVDDS -- no. Not</p> <p>10 LV. I have to think of the acronym, but it owns a</p> <p>11 company in Costa Rica. So that's a Costa Rican</p> <p>12 company, and Smith Sterling is the fictitious name</p> <p>13 for that operation. But that actual company is</p> <p>14 Dentalium Dental Ceramics, Inc. So there is also</p> <p>15 a JRG Dentalium, Inc., and that owns Pacific Edge</p> <p>16 Dental Laboratories which is also a fictitious</p> <p>17 name, but it stands for actually a company of that</p> <p>18 name in Mexico.</p> <p>19 Q. And all of these companies are</p> <p>20 encapsulated in the consolidated balance sheets</p> <p>21 here?</p> <p>22 A. And there's more than that even. Those</p> <p style="text-align: right;">Page 48</p>
<p>1 multiple companies are being considered?</p> <p>2 A. Correct.</p> <p>3 Q. What companies are being considered in</p> <p>4 this?</p> <p>5 A. Would you like a list of companies?</p> <p>6 Q. Sure.</p> <p>7 A. Okay. Well, the major player in that</p> <p>8 whole thing is James R. Glidewell Dental Ceramics,</p> <p>9 Inc.</p> <p>10 Q. Okay.</p> <p>11 A. There also would be Prismatic</p> <p>12 Dentalcraft, Inc.</p> <p>13 Q. Is that with a K?</p> <p>14 A. Yes. And Dentalcraft is one word.</p> <p>15 Q. What other companies?</p> <p>16 A. Riverside Dental Ceramics, Inc. New West</p> <p>17 Dental Laboratories, Inc. Smith Sterling Dental</p> <p>18 Laboratories. That's an Inc. That's a Florida</p> <p>19 company, and New West is an Arizona company. The</p> <p>20 first two are California companies. And another</p> <p>21 California company -- did I say Riverside Dental</p> <p>22 Ceramics?</p> <p style="text-align: right;">Page 47</p>	<p>1 are the ones I mainly remember because they are</p> <p>2 indirectly related to dental products.</p> <p>3 Q. I see on the page -- it's not numbered</p> <p>4 but page 1, I guess, which has the independent</p> <p>5 auditor's report on it signed by the CPA firm, I</p> <p>6 guess, it mentions James R. Glidewell Dental</p> <p>7 Ceramics, Inc. and subsidiaries. The "and</p> <p>8 subsidiaries" is basically the laundry list you're</p> <p>9 going through?</p> <p>10 A. Correct. I'm not remembering the name</p> <p>11 right off, but there's a company, and I think it's</p> <p>12 an LLC and its asset is a corporate jet, for</p> <p>13 instance.</p> <p>14 Q. So that would be included in here as</p> <p>15 well?</p> <p>16 A. All the companies would be.</p> <p>17 Q. Now, on the --</p> <p>18 A. There's also a company called IOS that</p> <p>19 would be part of this.</p> <p>20 Q. Okay. And then on that independent</p> <p>21 auditor's report, I see there is a board of</p> <p>22 directors that it references of James R. Glidewell</p> <p style="text-align: right;">Page 49</p>

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<p>1 Dental Ceramics.</p> <p>2 Do you see that?</p> <p>3 A. We're still on this page here, the</p> <p>4 independent auditor's report?</p> <p>5 Q. Correct, at the very top.</p> <p>6 How many directors are there on the board</p> <p>7 of directors? Do you know?</p> <p>8 A. There's one.</p> <p>9 Q. The board is just one director?</p> <p>10 A. Yes.</p> <p>11 Q. Is that Mr. James Glidewell?</p> <p>12 A. Yes.</p> <p>13 Q. I bet he's the chair too?</p> <p>14 A. Chairman of the board and the president</p> <p>15 of the company and the CEO.</p> <p>16 Q. Okay. And you obviously work very</p> <p>17 closely with Mr. Glidewell; correct?</p> <p>18 A. I do as much as all his managers do.</p> <p>19 Q. I wasn't going to put the org chart in</p> <p>20 front of you. I've put it in front of so many</p> <p>21 witnesses I'm tired of seeing it. Mr. Glidewell</p> <p>22 is on the top, and there's a number of people</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. Yeah, there you go. I see there's a</p> <p>2 note 8 associated with this statement, and it</p> <p>3 makes a reference to certain litigation arising in</p> <p>4 the normal course of its business.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And if you look in the last page of</p> <p>8 Exhibit 119, you'll see a similar statement is in</p> <p>9 there as well. It doesn't identify what the</p> <p>10 litigation is.</p> <p>11 A. Oh, I see that, yeah. Note 8?</p> <p>12 Q. Right.</p> <p>13 A. They're both note 8.</p> <p>14 Q. Right. Note 8.</p> <p>15 Is it fair to say that Glidewell is</p> <p>16 involved in litigation pretty much every year of</p> <p>17 its existence?</p> <p>18 A. No, that wouldn't be correct.</p> <p>19 Q. That would not be correct? But it was</p> <p>20 true since 2009?</p> <p>21 A. Definitely true since 2009.</p> <p>22 Q. Do you recall what litigation would be</p> <p style="text-align: right;">Page 52</p>
<p>1 underneath him like Mr. Shuck and yourself;</p> <p>2 correct?</p> <p>3 A. Correct. 3,300 employees the last number</p> <p>4 I remember.</p> <p>5 Q. How many employees were there when you</p> <p>6 started in '96? Do you recall?</p> <p>7 A. I don't recall how many, but I think I</p> <p>8 was like the 700th person hired. I don't know how</p> <p>9 many left before that.</p> <p>10 Q. So it's grown pretty significantly</p> <p>11 between 1996 and 2012?</p> <p>12 A. It has.</p> <p>13 Q. And it's still growing today?</p> <p>14 A. It is.</p> <p>15 Q. In fact, even looking at the numbers and</p> <p>16 the, you know, in the documents Exhibits 118 and</p> <p>17 119, they show growth from 2009 to 2010 to 2011 of</p> <p>18 the company as a whole. Is that accurate?</p> <p>19 A. That's correct.</p> <p>20 Q. And if you turn to the last page of</p> <p>21 Exhibit 118 -- actually go one more page back.</p> <p>22 A. You mean the very last page?</p> <p style="text-align: right;">Page 51</p>	<p>1 associated with note 8 in Exhibit 118?</p> <p>2 A. I do. It's the only thing that it could</p> <p>3 have been, and that would have been a lawsuit</p> <p>4 brought against Glidewell Laboratories by a</p> <p>5 Pennsylvania doctor named Dr. Dipietro.</p> <p>6 Q. How is his name spelled?</p> <p>7 A. Dipietro. It's her. D-i-p-i-e-t-r-o.</p> <p>8 Q. That was the only lawsuit you recall?</p> <p>9 A. No. There would be another one. I'm not</p> <p>10 exactly sure of the timing, but I'm sure it would</p> <p>11 have to be somewhere around that period, and it</p> <p>12 was a lawsuit brought on behalf of a plaintiff Tan</p> <p>13 Huyen. It was a labor action.</p> <p>14 Q. So Tan Huyen was an employee?</p> <p>15 A. Yes. It's Huyen. I think it starts with</p> <p>16 an H, not the N.</p> <p>17 Q. Oh, how is that name spelled?</p> <p>18 A. It's not easy to remember. I think it's</p> <p>19 H-u-y-e-n.</p> <p>20 Q. Do you recall what the resolution of the</p> <p>21 lawsuit was with employee Huyen?</p> <p>22 A. I pretty much know everything that's</p> <p style="text-align: right;">Page 53</p>

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<p>1 happened, and I wouldn't call it a resolution.</p> <p>2 I'd say it was an ongoing thing.</p> <p>3 Q. Is it still ongoing today?</p> <p>4 A. It is.</p> <p>5 Q. Oh, it is.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How about the lawsuit with -- I</p> <p>8 can't pronounce the name, but the Pennsylvania --</p> <p>9 A. Dipietro?</p> <p>10 Q. Yeah, the Pennsylvania doctor.</p> <p>11 A. That's an odd one. That was the longest</p> <p>12 lawsuit in history, I think, for me and it still</p> <p>13 is not over even though it may actually be when I</p> <p>14 look back a couple years from now. It's just gone</p> <p>15 dead.</p> <p>16 Q. So the lawsuit is still in existence?</p> <p>17 A. Yes.</p> <p>18 Q. What's the nature of that lawsuit?</p> <p>19 A. She had some failed crowns, and she</p> <p>20 decided that the laboratory somehow had given her</p> <p>21 some crowns that were going to fail.</p> <p>22 Q. So some kind of claim of defective</p> <p style="text-align: right;">Page 54</p>	<p>1 about the specific material that we had used and</p> <p>2 morphed into a lawsuit against the lab for having</p> <p>3 made an inferior crown.</p> <p>4 Q. Are there any other lawsuits you can</p> <p>5 think of since 2009?</p> <p>6 A. I don't think there are any others.</p> <p>7 Q. And Glidewell does not get sued for</p> <p>8 defective crowns very often. Is that fair?</p> <p>9 A. Not very often. I would know of every</p> <p>10 instance, and it's not very often, but there were</p> <p>11 some when I first started working there. Didn't</p> <p>12 really have to do with the laboratory. It had to</p> <p>13 do with the material, manufactured material.</p> <p>14 Q. Because Glidewell would buy the material</p> <p>15 from another party and make crowns with it and</p> <p>16 sell it to dentists; right?</p> <p>17 A. Correct.</p> <p>18 Q. What's the material at issue, if you</p> <p>19 know, in this lawsuit with this Pennsylvania</p> <p>20 doctor?</p> <p>21 A. I do know. It was a material from</p> <p>22 Ivoclar, and it was called d-Sign, which is</p> <p style="text-align: right;">Page 56</p>
<p>1 product?</p> <p>2 A. Exactly.</p> <p>3 Q. Okay. Now, Glidewell sells a lot of</p> <p>4 crowns?</p> <p>5 A. True.</p> <p>6 Q. Do you have a sense of how many crowns a</p> <p>7 year Glidewell sells?</p> <p>8 A. Yeah. Well, I should back up. I don't</p> <p>9 know exactly how many crowns, but we think in</p> <p>10 terms of units.</p> <p>11 Q. Right.</p> <p>12 A. And that could be more than crowns. Even</p> <p>13 a denture could be a unit. So you're looking at</p> <p>14 about 50,000 a month.</p> <p>15 Q. So more than half a million units a year;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And Glidewell puts a lot of effort into</p> <p>19 quality control to make sure they're not getting</p> <p>20 lawsuits like this one from the Pennsylvania</p> <p>21 doctor?</p> <p>22 A. Yes. And, in fact, it started as a gripe</p> <p style="text-align: right;">Page 55</p>	<p>1 spelled odd. It's a small D and a dash and a</p> <p>2 capital S-i-g-n. IPS d-Sign. It's a glass.</p> <p>3 Q. So it would be capital I, capital P,</p> <p>4 capital S and space, lower case D, hyphen, capital</p> <p>5 S-i-g-n?</p> <p>6 A. Correct.</p> <p>7 Q. That's from Ivoclar?</p> <p>8 A. Yes. It's a powdered ceramic that's used</p> <p>9 to overlay a metal coping to make a PFM.</p> <p>10 Q. As I said, Exhibit 119 has that same</p> <p>11 note 8 about litigation, and it sounds like the</p> <p>12 same litigation was still going on. So I guess</p> <p>13 the notes here in note 8 in the two exhibits in</p> <p>14 front of you, Exhibit 118 and 119, are referring</p> <p>15 to the same litigation. Is that fair?</p> <p>16 A. Yeah.</p> <p>17 Q. And 119 can include the present</p> <p>18 litigation?</p> <p>19 A. I'm trying to think of the dates on that.</p> <p>20 Q. This lawsuit was filed, I believe, in</p> <p>21 2011.</p> <p>22 A. Okay. I guess it would include this one</p> <p style="text-align: right;">Page 57</p>

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<p>1 too, then.</p> <p>2 Q. When they're preparing a document like</p> <p>3 this, would your office be consulted to contribute</p> <p>4 to review language, things -- this refers to</p> <p>5 litigation. I assume your office handles --</p> <p>6 manages internally litigation?</p> <p>7 A. I have done that before, and I think I do</p> <p>8 remember our attorney in Pennsylvania having</p> <p>9 written something about that. I don't remember if</p> <p>10 Leonard had been asked to write anything about</p> <p>11 that. I know that they do get opinions of</p> <p>12 attorneys when they do this.</p> <p>13 Q. Now, who works underneath you, if any,</p> <p>14 within Glidewell --</p> <p>15 A. No one.</p> <p>16 Q. In terms of the office of the general</p> <p>17 counsel, it's basically you. Is that fair?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Let me put in front of you -- you</p> <p>20 can put these documents aside.</p> <p>21 MR. TACHNER: By the way, David, as soon</p> <p>22 as you decide one way or the other with respect to</p> <p style="text-align: right;">Page 58</p>	<p>1 assemblage that was presented to Mr. Shuck in this</p> <p>2 form, and I'm just presenting it to you in this</p> <p>3 form because it was presented to him in that form.</p> <p>4 Not that I think they actually go together.</p> <p>5 A. Okay.</p> <p>6 Q. Let me see if we can learn a little bit</p> <p>7 about what appears to have been produced here.</p> <p>8 The first page labeled GL 227 appears to have</p> <p>9 numbers on it for -- well, columns for four years,</p> <p>10 basically 2012 back to 2009.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. And it looks like there's dollar amounts</p> <p>14 there associated with a reference to things being</p> <p>15 sent to labs and things being sent to doctors.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. What's your understanding of what's being</p> <p>19 shown here? Can you tell?</p> <p>20 A. Based on what I think I'm looking at, I</p> <p>21 would think I know what it's talking about. And</p> <p>22 it's talking about Prismatic zirconia blanks.</p> <p style="text-align: right;">Page 60</p>
<p>1 Sasaki, would you let us know; so we could tell</p> <p>2 him whether he's free tomorrow or has to be here?</p> <p>3 MR. JANKOWSKI: Right. And that's why</p> <p>4 I'm going through these now; so we'll know earlier</p> <p>5 rather than the end of the day.</p> <p>6 MR. TACHNER: Thank you.</p> <p>7 BY MR. JANKOWSKI:</p> <p>8 Q. I'm going to hand you what has previously</p> <p>9 been marked as Exhibit 37. This is from the Shuck</p> <p>10 deposition. Mr. Allred, what this appears to be</p> <p>11 to me anyway is an assemblage of documents</p> <p>12 produced by Glidewell in this case. You'll see</p> <p>13 how it's got the little numbers at the bottom.</p> <p>14 The first page as GL 227?</p> <p>15 A. Right. I see that.</p> <p>16 Q. So that's a production number that</p> <p>17 Glidewell or Glidewell's attorney affixed to the</p> <p>18 document just to indicate this is a document of</p> <p>19 Glidewell that's being produced in the case, and</p> <p>20 you see it's page 1 of 1. If you turn to the</p> <p>21 second page you see it's Glidewell 228. I don't</p> <p>22 think it's one document. I think it was an</p> <p style="text-align: right;">Page 59</p>	<p>1 Well, it says blocks.</p> <p>2 Q. Why do you say Prismatic? I would think</p> <p>3 it's BruxZir blanks.</p> <p>4 A. That's correct. Prismatic BruxZir</p> <p>5 blanks.</p> <p>6 Q. Oh, so you're using -- so you're using</p> <p>7 the word Prismatic with the BruxZir product as</p> <p>8 well?</p> <p>9 A. (No verbal response.)</p> <p>10 Q. Okay. So -- or I guess another way we</p> <p>11 can say it is BruxZir zirconia blanks?</p> <p>12 A. Correct.</p> <p>13 Q. And, in fact, is the BZ that's referenced</p> <p>14 there a shorthand reference to BruxZir?</p> <p>15 A. It's got to be.</p> <p>16 Q. I've seen that in a lot of these</p> <p>17 documents. And I see a reference to blocks and</p> <p>18 solution which I would interpret as being the</p> <p>19 blanks plus some of the ancillary products that go</p> <p>20 along with the blanks such as the coloring and</p> <p>21 liquid and the like?</p> <p>22 A. That must be colorants.</p> <p style="text-align: right;">Page 61</p>

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1 Q. Equipment associated with BruxZir such
2 as --
3 A. Okay.
4 Q. -- milling machines and sintering ovens?
5 A. Correct.
6 Q. And that's what the equipment is referred
7 to?
8 A. That and it even includes tools.
9 Q. Okay. And the first half of GL 227 says
10 "To Labs," which I would interpret as this is a
11 reference to sales to dental laboratories. Is
12 that accurate?
13 A. Correct.
14 Q. And I questioned Mr. Bartolo at length
15 about the Glidewell direct program and the fact
16 that Glidewell sells blanks and also equipment to
17 dental laboratories, the authorized Glidewell
18 Laboratories. And you're familiar with that;
19 correct?
20 A. The blanks makes them an authorized
21 dental laboratory if they purchase blanks and make
22 crowns out of it.

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1 Q. Right.
2 And the bottom half of GL 227 says "To
3 doctors." So those, I take it, are references to
4 sales of blocks and solution or equipment to
5 dentists as opposed to dental labs. Is that
6 accurate?
7 A. That's correct, but it could be a doctor
8 that owns a lab.
9 Q. Yeah, in fact, that's probably what this
10 is because it does look like they're selling them
11 blanks. You're not normally going to sell a
12 dentist a blank unless they have their own ability
13 to fabricate; correct?
14 A. True. They would have to have a mill.
15 Q. That would explain why the numbers in the
16 top half of the document are a lot bigger than the
17 numbers in the bottom because there aren't a lot
18 of dentists buying blanks from Glidewell; correct?
19 A. That's correct.
20 Q. There's a lot buying crowns but not the
21 blanks?
22 A. That's correct.

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1 Q. All right. And do you have an
2 understanding of what the numbers are that are in
3 this page? Is it just revenue?
4 A. I am less familiar with this than the
5 later document we provided. The later document,
6 if they're the same, it would be net sales. It
7 would be less discounts.
8 Q. That was actually going to be my next
9 question is I know we have had another document
10 production with more information, and maybe
11 that -- maybe this falls within that in any event.
12 But we'll get to the later document, and that
13 probably answers that question.
14 Okay. If we turn to the next page, this
15 would be GL 228, this one appears to be a
16 reference to marketing expenses.
17 Do you see that?
18 A. I do.
19 Q. This is associated with the BruxZir
20 brand, and you see it's referenced there on the
21 page.
22 Do you see that?

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1 A. I do.
2 Q. This is an area where Mr. Shuck actually
3 has a little more knowledge in this area. This
4 one I don't think is -- I don't think this
5 information was produced again later -- correct me
6 if I'm wrong -- but I think this is probably the
7 only presentation of marketing expense that we
8 have in this form.
9 Are you familiar with this data?
10 A. I know what it's talking about.
11 Q. What is being shown on GL 228?
12 A. This looks to me like the money that's
13 been spent on these various activities that are in
14 the left-hand column.
15 Q. This is cumulative from 2009 to 2012?
16 A. Correct.
17 Q. And who is it within Glidewell who would
18 be, you know, managing the expenses? Would that
19 be Mr. Shuck?
20 A. It would be.
21 Q. Okay. If we turn to the next page,
22 there's a plot of BruxZir sales.

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1 Do you see that?
2 A. I do.
3 Q. And this document looks like it's
4 associated with a Darryl Withrow at the bottom,
5 vice president operations.
6 Do you see that?
7 A. Correct.
8 Q. And you know Mr. Withrow?
9 A. I do.
10 Q. Okay. Do you have an understanding of
11 what's shown on this page?
12 A. This is sales by month. I don't see the
13 years. They're probably there if I look a little
14 closer. It looks like several years, and these
15 dot dot dots I suppose make it clearer.
16 Q. The product started being sold in 2009,
17 correct, the BruxZir?
18 A. Correct.
19 Q. That probably tells us the first month
20 would be June, 2009?
21 A. Correct. That's probably June, 2009, and
22 then you could just count the years down there.
Page 66

1 Q. Right.
2 And if that were the case, then this
3 would be showing sales through about June, 2012?
4 A. Can you write on this? Not really?
5 Q. You can, but I don't think you need to.
6 A. Well, I guess you just count up those
7 Decembers there. That would be one year.
8 Q. Right, right. I see -- if you want to
9 write and add -- do you just want to write and add
10 years to the document?
11 A. I was just going to draw a line there to
12 December.
13 Q. Go ahead. That's not a bad idea since it
14 didn't do that.
15 A. This one only goes to June, 2012.
16 Q. Okay. And this document looks like, just
17 based on the document itself, it was produced back
18 in early August.
19 A. That's why it only goes to June.
20 Q. Right.
21 A. The later one we provided you, I think,
22 goes to September.
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1 Q. And this is sales by month. This is just
2 revenue; is that right?
3 A. Correct.
4 Q. And the top line -- the copy we are
5 looking at in this deposition are in black and
6 white; so I don't know if the original would have
7 been in color or otherwise to distinguish the
8 lines better. The top line is the one associated
9 with the label Glidewell BruxZir; correct?
10 A. Correct.
11 Q. And the "All satellite labs BruxZir" is
12 the lower line; correct?
13 A. True.
14 Q. And when it says, "Glidewell BruxZir,"
15 that's referencing dental restorations made out of
16 the BruxZir material; correct?
17 A. That's correct.
18 Q. Okay. And for all satellite labs
19 BruxZir, that's referring to the blanks --
20 A. No, that's the same thing. It's just
21 that that's the other companies. It's called
22 subsidiaries.
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1 Q. Oh, okay. I'm confused then. So you're
2 saying -- the lower line -- the satellite labs,
3 first of all, that's a reference to Glidewell's
4 authorized labs?
5 A. No, that's Glidewell's subsidiaries.
6 Q. Oh, okay. Oh. Oh. So these are sales
7 of crowns by Glidewell's subsidiaries?
8 A. Correct.
9 Q. I see.
10 And these subsidiaries are selling
11 crowns -- is this limited to the U.S.?
12 A. Definitely.
13 Q. And these subsidiaries would be some of
14 the same ones you were referring to earlier
15 associated with the financial statements?
16 A. They are the same ones.
17 Q. Okay. If we turn to the next document --
18 the next document is a little hard to read and, in
19 fact, the next two documents are a little hard to
20 read. One appears to be a two-page document and a
21 12-page document which is kind of in a spreadsheet
22 form.
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<p>1 A. This might look a little better on a</p> <p>2 spreadsheet.</p> <p>3 Q. That's what I was going to say was we are</p> <p>4 going to look at the spreadsheets that were</p> <p>5 produced later. Is it fair to say that the</p> <p>6 spreadsheets that were produced to us later</p> <p>7 include the same information?</p> <p>8 A. Yes.</p> <p>9 Q. And that's probably easier to look at</p> <p>10 those? I have nice printouts of those that I</p> <p>11 think we can understand a little easier than</p> <p>12 these. We probably don't need to go through the</p> <p>13 harder form of presentation. Does that sound fair</p> <p>14 to you?</p> <p>15 A. It does.</p> <p>16 Q. Okay. Good. I like that idea.</p> <p>17 MR. JANKOWSKI: How you doing? You want</p> <p>18 to take a little break?</p> <p>19 MR. TACHNER: Sure.</p> <p>20 THE WITNESS: I'm doing good.</p> <p>21 MR. JANKOWSKI: You want to keep going or</p> <p>22 take a break?</p> <p style="text-align: right;">Page 70</p>	<p>1 Q. Exactly. It is. The first one appears</p> <p>2 to be a three-page document with Glidewell's</p> <p>3 designation for purposes of producing it, GL 229.</p> <p>4 Then there's a one-page document, GL 230. Another</p> <p>5 one-page document, GL 231. Another one-page</p> <p>6 document, GL 232. Then a two-page document</p> <p>7 GL 233. Two-page document, GL 234.</p> <p>8 A. There's a 234 on here? Oh, okay. There</p> <p>9 it is. They don't have any headings on them at</p> <p>10 all, do they?</p> <p>11 Q. They don't appear to.</p> <p>12 A. Are these in response to particular</p> <p>13 questions?</p> <p>14 Q. They were produced in the case, and in</p> <p>15 the case, Glidewell was asked to produce documents</p> <p>16 associated with certain areas. The short answer</p> <p>17 is yes.</p> <p>18 A. Okay. It might help.</p> <p>19 Q. Let's just go through the first one, the</p> <p>20 first single-page document identifies a doctor ID</p> <p>21 column, a description column, and a date column.</p> <p>22 Do you see that?</p> <p style="text-align: right;">Page 72</p>
<p>1 THE WITNESS: It's up to you guys.</p> <p>2 MR. JANKOWSKI: Why don't we take a</p> <p>3 five-minute break.</p> <p>4 MR. TACHNER: Okay.</p> <p>5 (Recess taken from 10:58 a.m. to</p> <p>6 11:11 a.m.)</p> <p>7 BY MR. JANKOWSKI:</p> <p>8 Q. Mr. Allred, I'm going to hand you what</p> <p>9 has been previously marked as Exhibit 40. This is</p> <p>10 a document that was provided to Mr. Shuck when he</p> <p>11 was being questioned as Glidewell's designee. If</p> <p>12 you could just briefly look at Exhibit 40 for me.</p> <p>13 A. Okay.</p> <p>14 Q. I'll say this appears to be another</p> <p>15 example of an assemblage of documents. I don't</p> <p>16 think it's one document. I think it's a</p> <p>17 collection of Glidewell documents each of which</p> <p>18 was produced by Glidewell in the case, but they</p> <p>19 were all kind of combined together and submitted</p> <p>20 to Mr. Shuck this way.</p> <p>21 A. Does it go on like this? Is it more than</p> <p>22 one document?</p> <p style="text-align: right;">Page 71</p>	<p>1 A. I do.</p> <p>2 Q. And do you know whether Glidewell has a</p> <p>3 way of identifying -- well, the doctor ID column,</p> <p>4 is doctor ID something that Glidewell -- does</p> <p>5 Glidewell use the term "doctor ID"? Does it have</p> <p>6 a particular meaning that you're aware of?</p> <p>7 A. It does.</p> <p>8 Q. What does doctor ID mean?</p> <p>9 A. Every client of the company has a unique</p> <p>10 ID number, and the first two digits, I believe,</p> <p>11 has to do with the company that that doctor is</p> <p>12 dealing with. So a 10, I believe, is Glidewell</p> <p>13 Laboratories.</p> <p>14 Q. Okay. Some of the subsidiaries would</p> <p>15 have different two digit beginnings?</p> <p>16 A. That is what I believe is correct.</p> <p>17 Q. What about the six digit number that</p> <p>18 follows the two digit number?</p> <p>19 A. That's all part of the unique number</p> <p>20 assigned to a particular individual.</p> <p>21 Q. So that would be a particular --</p> <p>22 A. Account, I guess you'd say, because an</p> <p style="text-align: right;">Page 73</p>

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1 account could be more than one doctor.
2 Q. Sure.
3 And the account in this context is
4 referring to a dentist office typically?
5 A. Correct.
6 Q. Okay. The date column is probably
7 self-explanatory. It's the date something is
8 happening. In fact, it's got a time as well;
9 correct?
10 A. That's correct.
11 Q. And the middle column has a description
12 in it. Can you tell by looking at this what is
13 being referenced in the description column?
14 A. I don't know what that is short for. I
15 would look at that and see that as part of
16 something bigger. Doctors requesting something.
17 I have no idea what it is because it doesn't have
18 any more information than that. It looks like the
19 same account. All the way down this first row
20 here is this same account. It just looks like a
21 doctor requesting something day after day. I
22 don't know what that means.

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1 Q. If you go down to the second page of the
2 document still on GL 229, I see a prefix 30
3 instead of 10 at the beginning?
4 A. Correct.
5 Q. So that's going to be one of the
6 subsidiaries?
7 A. That's true.
8 Q. Do you know which subsidiary 30 is?
9 A. I don't.
10 Q. But it's one of them?
11 A. It would be one of them.
12 Q. And I see some of the descriptions say
13 things like "Confirm ship date information."
14 Do you see that?
15 A. I do see that.
16 Q. So this appears like maybe what it is is
17 some sort of log of people within Glidewell who
18 are handling communications with the accounts?
19 A. I'm pretty sure I know where this
20 information comes from.
21 Q. Where does it come from?
22 A. This would be a -- we call it GCM. It's

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1 what you might think of as an information storage
2 retrieval account management system. Maybe you're
3 familiar with the old TeleMagic. That's a way
4 that you record some transaction with an account,
5 a client, and it does record that kind of
6 information, what it was that was discussed, who
7 it was, and the date it was done on.
8 Q. So, for example, a Glidewell employee is
9 talking on the phone with a dentist and they'll
10 enter something into the computer that
11 memorializes the phone call?
12 A. Pretty much can count on that with any
13 customer service person.
14 Q. So these entries are probably by the
15 customer service people?
16 A. That would be almost every case.
17 Q. When I was questioning Mr. Bartolo
18 yesterday, he talked about having customer service
19 people working underneath him at Glidewell Direct.
20 Is that probably what this is associated with?
21 A. It might be specifically Glidewell
22 Direct.

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1 Q. Or might not because actually there's
2 probably customer service separate from Glidewell
3 Direct as well; correct?
4 A. That's true.
5 Q. Okay. If we turn to the next page which
6 is designated GL 230.
7 A. Okay.
8 Q. This is a three-column table with the
9 headings "Product," "Product ID," and "Product for
10 sale date."
11 Do you see that?
12 A. That helps, yes.
13 Q. This one I think is a little easier to
14 understand, and we also see the -- if you look
15 under "Product ID," I see BZCLA 1 in the first
16 one. And to the left, I see BruxZir color liquid
17 shade A1. This is further confirmation that the
18 BZ seems to be Glidewell's internal designation
19 for BruxZir. Is that fair?
20 A. Yes.
21 Q. Here when it says, "CL," it looks like
22 it's a shorthand for color liquid.

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1 Would you agree?
2 A. That's a logical deduction. It could be
3 anything. Definitely the products are uniquely
4 identified by codes. That's how they price them
5 in the accounting system. It's all part of the
6 same system.
7 Q. Right.
8 So that first entry there you can see
9 BZCLA1 corresponds nicely with BruxZir color
10 liquid shade A1?
11 A. That works out good.
12 Q. The last column appears to be providing
13 information on when that particular product was
14 first sold by Glidewell; is that right?
15 A. I see that, yes.
16 Q. If we go down towards the bottom of the
17 column, I see reference to BruxZir milling blanks,
18 12 millimeter, 15 millimeter, 20 millimeter, and
19 25 millimeter.
20 Do you see that?
21 A. I do.
22 Q. You're aware that BruxZir sells milling
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1 blanks with different sizes; correct?
2 A. Yes.
3 Q. Similarly, this table appears to be
4 giving for each of these various products the
5 first sale date by Glidewell; is that right?
6 A. Definitely the first date that this code
7 was ever used.
8 Q. Okay. And to answer your earlier
9 question, this is an example where Glidewell was
10 asked to provide information on the first date of
11 sale, and so this is a document that was produced
12 in response to the sets of requests that included
13 that request.
14 A. Okay.
15 Q. To understand why that would be
16 presented.
17 A. Relating to this first page?
18 Q. Or even this first page. In other words,
19 each of these documents was produced by Glidewell
20 because in the lawsuit, they were asked to provide
21 certain types of information. One of the types of
22 information that was asked was what was your first
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1 day selling these various products, for example.
2 A. And what was this in response to, the
3 first?
4 Q. I don't know. I'm speaking generally
5 about why the documents are being produced.
6 A. Okay.
7 Q. If you turn to the next document, GL 231?
8 A. I guess I'm there.
9 Q. On this one, I see a four-column table,
10 and I see on the left a company.
11 Do you see that?
12 A. I do.
13 Q. A customer first name.
14 Do you see that?
15 A. Uh-huh.
16 Q. A customer last name, and a customer ID.
17 Do you see that?
18 A. I do.
19 Q. I think you already testified about this
20 about how the customer ID is referring to a
21 particular account?
22 A. Correct.
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1 Q. Is it fair to say this table is just
2 providing more information on these accounts,
3 namely a company name and then an individual name?
4 A. It does look to be laboratories in
5 particular.
6 Q. Right.
7 For these instances here, it is, correct?
8 So the customer ID, the customer might be a dental
9 lab; correct?
10 A. I would say this one they are dental
11 labs.
12 Q. Do you have an understanding for why
13 these particular labs have been identified in this
14 document?
15 A. It looks to me like they are purchasers
16 given the rest of this stuff here of the zirconia
17 blanks.
18 Q. But certainly this is not a comprehensive
19 list of all the dental labs that buy the blanks
20 because there's a lot more than this; correct?
21 A. There's a lot more than that.
22 Q. And do you have a sense for why this
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<p>1 subset was called on on this particular page?</p> <p>2 A. I don't because I don't see a date which</p> <p>3 you were saying before maybe corresponded to the</p> <p>4 first purchasers of blanks. So I don't know why</p> <p>5 just those few.</p> <p>6 Q. All right. Let's turn to the next</p> <p>7 document, GL 232. This is another four-column</p> <p>8 table that shows model number, serial number, lot</p> <p>9 number, and product category.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Do you have an understanding for what</p> <p>13 those headings mean within Glidewell?</p> <p>14 A. I would just have to guess. It doesn't</p> <p>15 apply to anything on this page. Nothing having to</p> <p>16 do with this page.</p> <p>17 Q. But what about model -- just the phrase</p> <p>18 "model number," does that have a meaning within</p> <p>19 Glidewell, a particular meaning?</p> <p>20 A. Not that I am familiar with.</p> <p>21 Q. Okay. How about serial number?</p> <p>22 A. I only see that it's used here.</p> <p style="text-align: right;">Page 82</p>	<p>1 before, namely a company, a customer first name</p> <p>2 and a customer last name. Now those are</p> <p>3 correlated. So is it fair to say that this is</p> <p>4 providing information on not just the for sale</p> <p>5 date, but who the customer was who purchased the</p> <p>6 product on that sale date? Does that look</p> <p>7 accurate?</p> <p>8 A. Definitely looks like it's showing</p> <p>9 exactly what a laboratory bought on a particular</p> <p>10 date.</p> <p>11 Q. Right.</p> <p>12 For the various product IDs; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And the customer ID at the far</p> <p>15 right is going to be the same customer ID</p> <p>16 information we discussed earlier; correct?</p> <p>17 A. That will be a unique number for each</p> <p>18 account, correct.</p> <p>19 Q. If we turn to the next page or next</p> <p>20 document I should say, GL 234, this is similar to</p> <p>21 one of the earlier ones that appears to have that</p> <p>22 model number, the serial number, lot number,</p> <p style="text-align: right;">Page 84</p>
<p>1 Q. How about lot number?</p> <p>2 A. I see that's used here too.</p> <p>3 Q. Product category I think is</p> <p>4 understandable; right?</p> <p>5 A. Yeah, that's pretty straightforward.</p> <p>6 Q. Okay. Let's turn to the next document,</p> <p>7 GL 233. This is a two-page document. You know, I</p> <p>8 think this maybe helps answer my earlier question</p> <p>9 to you where we saw some of these names of these</p> <p>10 companies, and we saw first sale information, and</p> <p>11 you were saying they might be connected, the names</p> <p>12 and sales, and it looks like GL 233 might do just</p> <p>13 that; right? In other words, I see a column, the</p> <p>14 second column over says, "Product first sale</p> <p>15 date."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And you've got the product ID on the left</p> <p>19 which we've already discussed what that is;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And now we've got the information we saw</p> <p style="text-align: right;">Page 83</p>	<p>1 product category and the product. So, again, this</p> <p>2 doesn't really have much helpful information on it</p> <p>3 that I can tell. Can you make heads or tails of</p> <p>4 GL 234?</p> <p>5 A. It just looks like the type of product</p> <p>6 that we sell and all of the different ways that it</p> <p>7 can be purchased, and primarily in this page here</p> <p>8 seems to be the different shades of coloring</p> <p>9 liquid. I see some milling blanks at the bottom</p> <p>10 and the different sizes. It looks like there's</p> <p>11 different sizes of sintering boats.</p> <p>12 Q. And, again, you don't have an</p> <p>13 understanding of what the lot number is that's</p> <p>14 referenced in the third column over?</p> <p>15 A. Well, I understand why they use lot</p> <p>16 numbers. I don't know exactly when they cut over</p> <p>17 and maybe put it on this sheet or when they</p> <p>18 stopped using them on this sheet because they were</p> <p>19 keeping track of it in some other way.</p> <p>20 Q. What does lot number mean to you?</p> <p>21 A. That would be something that's kept track</p> <p>22 of for purposes of quality control and the</p> <p style="text-align: right;">Page 85</p>

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<p>1 regulatory affairs, some kind of quality 2 assessment program having to do with ISO 3 certification that PrismaTik is ISO certified. So 4 they would have to keep track of that information. 5 Q. When you say "PrismaTik," this is the 6 PrismaTik BruxZir -- 7 A. PrismaTik Dentalcraft, Inc. 8 Q. PrismaTik Dentalcraft, Inc. Okay. 9 Actually the lot numbers are only shown 10 for some of these for some reason. Do you have an 11 understanding for why some of these don't have lot 12 numbers associated with them? 13 A. What I was just ruminating on, I don't 14 know if they began to be used on this particular 15 program that's printing this and they were kept 16 track of in some other way before, or if now 17 they're kept in some other way and they're no 18 longer kept on this program. I just know they are 19 kept, and they are done and every single thing 20 that's made and has to be tracked, would have a 21 lot number. 22 Q. So, for example, the BruxZir milling</p> <p style="text-align: right;">Page 86</p>	<p>1 recognize the words, what they're talking about. 2 Q. Okay. And what is being shown in 3 Exhibit 120? 4 A. It looks like blocks in various sizes 5 made to fit various mills, each of them being 6 identified by a unique ID. 7 Q. So this correlates the product ID with a 8 description of what the product is? 9 A. Correct. 10 Q. As you go down the document, it's not 11 just the milling blocks. It goes into other 12 products as well; correct, such as coloring 13 liquids and dental restorations? 14 A. Yeah, blank block, blank block. This 15 looks like mainly blocks and then finally moves 16 into coloring liquids, correct. 17 Q. And then moves into dental restorations? 18 A. Then dental restorations. 19 Q. And I notice under "Department ID" that 20 the blocks are sold by Glidewell Direct; correct? 21 A. Well, it was on this first page here. 22 And the second page.</p> <p style="text-align: right;">Page 88</p>
<p>1 blanks that are listed towards the bottom of this 2 page, GL 234, page 1 of 2, those are going to have 3 lot numbers even though they're not shown on this 4 exhibit? 5 A. Yes. 6 Q. Okay. Let's move on to another exhibit 7 and set that one aside. In fact, let's get to the 8 newer documents. 9 MR. JANKOWSKI: I think are we up to 10 Exhibit 120? 11 THE REPORTER: Correct. 12 MR. JANKOWSKI: I'll have the court 13 reporter mark as the next Exhibit 120 a nine-page 14 document which is a printout from an Excel 15 spreadsheet that was produced in native format by 16 Glidewell. 17 (Exhibit No. 120 was marked for 18 identification.) 19 BY MR. JANKOWSKI: 20 Q. Mr. Allred, if you just briefly look at 21 Exhibit 120, do you recognize this exhibit? 22 A. I recognize what's on the document. Or</p> <p style="text-align: right;">Page 87</p>	<p>1 Q. Right. And that's -- 2 A. And the third page. And part of the 3 fourth page. 4 Q. And coloring liquids are also sold by 5 Glidewell Direct? 6 A. Correct. 7 Q. Okay. And then if you get to the fourth 8 page when you get to dental restorations, which 9 are now being sold to doctors or dentists, the 10 department changed. It's not Glidewell Direct 11 anymore. It's other departments; correct? 12 A. Correct. 13 Q. And I see references to a fixed 14 department and a BioTemps department and a gold 15 zirconia and comp department. 16 Do you see that? 17 A. I do. 18 Q. And so they're various departments within 19 Glidewell that are responsible for fabricating 20 these dental restorations and selling them to 21 dentists around the country. Is that accurate? 22 A. That's true.</p> <p style="text-align: right;">Page 89</p>

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<p>1 Q. And that's what's being shown here is</p> <p>2 which department is responsible for these various</p> <p>3 products; correct?</p> <p>4 A. That is the code that is used for each of</p> <p>5 these departments when they fabricate that</p> <p>6 product. So that's how you would keep track of</p> <p>7 your sales if you were in the high tech</p> <p>8 department, all ceramic and you were making a</p> <p>9 BruxZir zirconia bridge unfinished, for instance.</p> <p>10 Q. So every crown or dental restoration</p> <p>11 that's sold by Glidewell is going to have a</p> <p>12 particular product ID as shown in Exhibit 120, and</p> <p>13 it's going to come out of a particular department</p> <p>14 with a department ID as shown in this exhibit;</p> <p>15 correct?</p> <p>16 A. That's what this is right here.</p> <p>17 Q. And so, again, your testimony today is</p> <p>18 that this is true and accurate business records of</p> <p>19 Glidewell as produced in this case; correct?</p> <p>20 A. That's true. That's how they keep track</p> <p>21 of their production.</p> <p>22 Q. Okay. Let me show you -- or excuse me.</p> <p style="text-align: right;">Page 90</p>	<p>1 Q. And then equipments if you go down far</p> <p>2 enough.</p> <p>3 A. And then equipments.</p> <p>4 Q. Okay. And so, again, this document would</p> <p>5 be accurate business records of Glidewell as</p> <p>6 produced by Glidewell in this case?</p> <p>7 A. This is an accurate record produced</p> <p>8 pursuant to your request for documents.</p> <p>9 Q. Right.</p> <p>10 And the left most column is showing the</p> <p>11 year of invoicing; correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And the second column is showing the</p> <p>14 month where 1 is January and 12 is December and so</p> <p>15 on?</p> <p>16 A. Correct. It looks like same info there,</p> <p>17 month and month name.</p> <p>18 Q. They give us both ways of presenting the</p> <p>19 month, and then the product groups are the ones</p> <p>20 you just mentioned broken out. Dental</p> <p>21 restorations which means crowns and the like,</p> <p>22 blocks which mean the milling blanks, the coloring</p> <p style="text-align: right;">Page 92</p>
<p>1 MR. JANKOWSKI: Let me have the court</p> <p>2 reporter mark as Exhibit 121 a four-page document.</p> <p>3 (Exhibit No. 121 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. JANKOWSKI:</p> <p>6 Q. Exhibit 121, Mr. Allred --</p> <p>7 A. Are we done with this one?</p> <p>8 Q. We are done with that one.</p> <p>9 A. Oh, okay.</p> <p>10 Q. Yes, you can set that one aside.</p> <p>11 Exhibit 121 was also produced by</p> <p>12 Glidewell at the same time as the previous</p> <p>13 document, and it was produced in a native format.</p> <p>14 A. This was the most recent we provided you?</p> <p>15 Q. Correct.</p> <p>16 A. I'm familiar with this.</p> <p>17 Q. What is shown here in Exhibit 121?</p> <p>18 A. This is showing the sales by month</p> <p>19 beginning in June, 2009, to, I believe, September,</p> <p>20 2012. And it's broken apart by -- it was four</p> <p>21 categories. I see dental restorations, blocks,</p> <p>22 coloring liquids.</p> <p style="text-align: right;">Page 91</p>	<p>1 liquids and then equipment are separate categories</p> <p>2 in this document; correct?</p> <p>3 A. Correct.</p> <p>4 Q. And then the net sales is shown in the</p> <p>5 far right column; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you know whether Glidewell maintains</p> <p>8 information on, you know, cost of goods sold</p> <p>9 associated with these categories?</p> <p>10 A. They would have the ability to get that</p> <p>11 information if they didn't do it on a regular</p> <p>12 basis already, for sure.</p> <p>13 Q. Associated with that, they could generate</p> <p>14 gross profits by category as well?</p> <p>15 A. That would be something that they could</p> <p>16 do, for sure.</p> <p>17 Q. Okay.</p> <p>18 MR. JANKOWSKI: Okay. Can we go off the</p> <p>19 record.</p> <p>20 (Lunch recess taken from 11:40 a.m.</p> <p>21 to 12:58 p.m.)</p> <p>22 ///</p> <p style="text-align: right;">Page 93</p>

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<p>1 BY MR. JANKOWSKI:</p> <p>2 Q. Mr. Allred, one of the things that -- we</p> <p>3 just had our lunch break, and one of the things</p> <p>4 that happened was we decided to cancel the</p> <p>5 deposition of Mr. Sasaki, the chief financial</p> <p>6 officer of Glidewell, based on the testimony</p> <p>7 you've been giving this morning. And also I had a</p> <p>8 conversation with your counsel. What I would like</p> <p>9 you to do is investigate from Glidewell additional</p> <p>10 financial information along the lines of the</p> <p>11 spreadsheet with the sales information by month</p> <p>12 that you were testifying about just before lunch,</p> <p>13 and in particular, I think what -- basically what</p> <p>14 we want to know is both net and gross sales of the</p> <p>15 products. So, you know, like taking into account</p> <p>16 if you have cost of goods sold information on the</p> <p>17 categories that correlates with the sales. Like</p> <p>18 right now the information is just revenue --</p> <p>19 A. The net sales is only net of discounts;</p> <p>20 so that is gross sales less any discounts less the</p> <p>21 cost to make it.</p> <p>22 Q. Let me ask you this: What I'd like you</p> <p style="text-align: right;">Page 94</p>	<p>1 the 2011 calendar year, I think that suffices.</p> <p>2 A. And you're interested in that for a</p> <p>3 specific product? Because obviously for all</p> <p>4 products, that's part of the statements where you</p> <p>5 look down and you see the net income.</p> <p>6 Q. Correct.</p> <p>7 So the products that are identified in</p> <p>8 the exhibit we were looking at before lunch.</p> <p>9 A. Well, we had equipment, colorants, dental</p> <p>10 restorations.</p> <p>11 Q. Right.</p> <p>12 A. And one other thing. Blocks.</p> <p>13 Q. Right.</p> <p>14 A. So obviously colorants are divided up</p> <p>15 into many, many different types, and it probably</p> <p>16 would make sense to, at most, have it for</p> <p>17 colorants in general. And then crowns could, of</p> <p>18 course, be many different laboratories we know,</p> <p>19 and it would probably make sense to just have</p> <p>20 something in general for the company in general.</p> <p>21 Otherwise, it looks like a lot of tedious work,</p> <p>22 and I don't know how much time that would take or</p> <p style="text-align: right;">Page 96</p>
<p>1 to investigate is cost of goods sold associated</p> <p>2 with -- providing the information on cost of goods</p> <p>3 sold associated with the same sales that are</p> <p>4 shown --</p> <p>5 A. I think we can do that in general, but</p> <p>6 that wouldn't be anything that we would ever know</p> <p>7 on a unit-by-unit basis which is how all those</p> <p>8 figures are derived by the individual product code</p> <p>9 by doctor. There's no way to know what the actual</p> <p>10 cost of goods sold is for that unit. It would be</p> <p>11 very easy for a company like I work for to be able</p> <p>12 to determine what the cost of goods sold was for</p> <p>13 something, for example, a finished crown of any</p> <p>14 type.</p> <p>15 Q. In a sense, that's what I'm asking for.</p> <p>16 A. It's not anything that exists on a</p> <p>17 monthly-to-monthly basis necessarily.</p> <p>18 Q. Well, and you don't need to give it on a</p> <p>19 month-by-month basis if that's not appropriate.</p> <p>20 A. Okay.</p> <p>21 Q. For example, if you've got a cost of</p> <p>22 goods sold for what the product is generally for</p> <p style="text-align: right;">Page 95</p>	<p>1 how difficult it would be.</p> <p>2 I just know my company could easily know</p> <p>3 what the cost of goods sold was for a particular</p> <p>4 item if you have one in mind like, for instance, a</p> <p>5 mill and even that might be kind of difficult, but</p> <p>6 I'm sure they could come up with it, something</p> <p>7 based on an analysis. Some of these things would</p> <p>8 be a little difficult because it would be</p> <p>9 difficult to know how much you would put in there</p> <p>10 if you as a company were actually looking at it</p> <p>11 from the point of view of some kind of long range</p> <p>12 plan of building mills, because obviously in the</p> <p>13 early stages, you have research and engineering</p> <p>14 and you have things you try and don't work and you</p> <p>15 replace, and, theoretically, your first unit could</p> <p>16 cost a million dollars even though the target</p> <p>17 price could be 60,000.</p> <p>18 Some of these things would be up to us</p> <p>19 how we interpreted what your request was. If you</p> <p>20 made it something as narrow as what, for instance,</p> <p>21 is the cost of goods sold for a full contour</p> <p>22 zirconia crown given the fact that you buy the</p> <p style="text-align: right;">Page 97</p>

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<p>1 block for a certain amount, you could come up with</p> <p>2 that amount. If you then say how much does it</p> <p>3 cost to produce a zirconia block of, say, a</p> <p>4 certain thickness, and I remember seeing 25, for</p> <p>5 instance, the ones we use, that would give you an</p> <p>6 idea. But I think if that's all you need, I think</p> <p>7 that would be pretty easy to do.</p> <p>8 Q. I understand what you're saying. Why</p> <p>9 don't you investigate for us the cost of goods</p> <p>10 sold associated with the BruxZir crown.</p> <p>11 A. Okay.</p> <p>12 Q. That product specifically. I mean that's</p> <p>13 the product that's kind of at issue in this case</p> <p>14 in terms of Keating sells crowns under the KDZ</p> <p>15 Bruxer mark and so on.</p> <p>16 A. Okay.</p> <p>17 Q. And then let me ask you in Exhibit 121,</p> <p>18 do you still have that in front of you?</p> <p>19 A. Is that the last one we looked at?</p> <p>20 Q. Yes.</p> <p>21 A. Okay.</p> <p>22 Q. Where it has net sales on the right-hand</p> <p style="text-align: right;">Page 98</p>	<p>1 over 15,000 full contour zirconia crowns every</p> <p>2 week.</p> <p>3 Q. Okay. That's helpful. That's the kind</p> <p>4 of information that -- if you can -- I mean if you</p> <p>5 can just have somebody generate --</p> <p>6 A. How about number of units of the crowns</p> <p>7 per week since 2009 because I think we actually</p> <p>8 have that. It's something we've actually</p> <p>9 provided, but we can do it on a separate</p> <p>10 spreadsheet.</p> <p>11 Q. Or per month since this is per month?</p> <p>12 A. Yeah. I think we have it already, in</p> <p>13 fact.</p> <p>14 Q. Right.</p> <p>15 A. We could just maybe redo it again in a</p> <p>16 format like this, if you'd like it. So we have</p> <p>17 2009, we have June. This whole sheet would be</p> <p>18 nothing but full contour zirconia crowns, and in</p> <p>19 the right-hand column, the net sales would be</p> <p>20 number of units.</p> <p>21 Q. Correct.</p> <p>22 A. Okay. I think that's very doable.</p> <p style="text-align: right;">Page 100</p>
<p>1 column, does Glidewell have unit information as</p> <p>2 well on that?</p> <p>3 A. Oh, yeah, it would. It would have it all</p> <p>4 the way down to what the sales would be by the</p> <p>5 particular laboratory that did it. You saw that</p> <p>6 code there.</p> <p>7 Q. Right, right.</p> <p>8 So here -- another thing I would like to</p> <p>9 have is a number of units associated with this</p> <p>10 spreadsheet essentially, the information in this</p> <p>11 spreadsheet. So each entry has a net sales</p> <p>12 amount, but I don't know how many of the dental</p> <p>13 restorations --</p> <p>14 A. Shall we just agree that we just do that</p> <p>15 for just the BruxZir crowns?</p> <p>16 Q. Sure.</p> <p>17 A. Because that might be a little bit more</p> <p>18 manageable.</p> <p>19 Q. Yes, and same for cost of goods sold.</p> <p>20 A. Do you want it actually broken out by --</p> <p>21 in some particular way more than just a number?</p> <p>22 Because I can tell you right now that we're doing</p> <p style="text-align: right;">Page 99</p>	<p>1 Q. Can you also do net sales with the crown</p> <p>2 as well?</p> <p>3 A. You mean right with it? Sure.</p> <p>4 Q. Here it says "Dental restorations." That</p> <p>5 might be something beyond the crown?</p> <p>6 A. You can divide it up by \$99. It's</p> <p>7 roughly the same number.</p> <p>8 Q. Has the price been the same the whole</p> <p>9 time?</p> <p>10 A. Yes.</p> <p>11 Q. Do these dental restorations include</p> <p>12 restorations beyond crowns here?</p> <p>13 A. No, they're all per unit. It very well</p> <p>14 could be a bridge, but it still would be by unit.</p> <p>15 Q. Let me ask you this then; make this</p> <p>16 spreadsheet just for the crowns. And where --</p> <p>17 actually, I guess, that's all we -- you're telling</p> <p>18 me the price has been 99 the whole time?</p> <p>19 A. Yeah. I'm just giving you a heads-up on</p> <p>20 what it will be. I already pretty much know what</p> <p>21 the number would be just by the sales.</p> <p>22 Q. Make an equivalent to this spreadsheet</p> <p style="text-align: right;">Page 101</p>

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<p>1 where it's nothing but the full zirconia crowns?</p> <p>2 A. Okay.</p> <p>3 MR. TACHNER: Do you break it out</p> <p>4 separate from bridges?</p> <p>5 THE WITNESS: No.</p> <p>6 MR. TACHNER: Then you can't comply with</p> <p>7 this request.</p> <p>8 THE WITNESS: Yeah, we have them by unit</p> <p>9 because a bridge is a certain number of units, and</p> <p>10 that's how they're built.</p> <p>11 MR. TACHNER: So if you have a three-unit</p> <p>12 bridge, it's a \$300 item?</p> <p>13 THE WITNESS: Yes, it is. From us. Of</p> <p>14 course, from the doctor it's 3,000.</p> <p>15 MR. TACHNER: I'm just making sure you</p> <p>16 agree to something you could do. That's all.</p> <p>17 BY MR. JANKOWSKI:</p> <p>18 Q. And then, in fact, I guess the -- then</p> <p>19 the units is just going to be -- well, if it's</p> <p>20 easy, just put the units on the spreadsheet as</p> <p>21 well.</p> <p>22 A. Yeah, I'm sure that's how -- this might</p> <p style="text-align: right;">Page 102</p>	<p>1 A. Okay. Per unit?</p> <p>2 Q. Right, per unit with a maximum of four or</p> <p>3 something.</p> <p>4 A. That could be different because, say, it</p> <p>5 was an eight-unit bridge.</p> <p>6 Q. Yes. Okay. So that would be perfect.</p> <p>7 So it will look like Exhibit 121. You don't need</p> <p>8 to replicate the month by number and name. Other</p> <p>9 than that, it would be the same except for product</p> <p>10 group, it's just going to say BruxZir crown?</p> <p>11 A. Dental restoration, sure.</p> <p>12 Q. And units and net sales. Does that sound</p> <p>13 right?</p> <p>14 A. Sure. In fact, I can just write it on</p> <p>15 here.</p> <p>16 Q. Don't write it on that because this goes</p> <p>17 with the court reporter.</p> <p>18 A. Oh, because that one is already written</p> <p>19 on.</p> <p>20 Q. That's okay. But we'll make a point of</p> <p>21 that.</p> <p>22 A. So we only just want the number or the</p> <p style="text-align: right;">Page 104</p>
<p>1 even come about. It might have been the number of</p> <p>2 units times -- minus something and times \$99. I</p> <p>3 don't know if they actually have separate columns</p> <p>4 for all that or not.</p> <p>5 Q. Right.</p> <p>6 A. That's what the codes are all about.</p> <p>7 Once you put in the code, you put 1 times that</p> <p>8 code and you get the dollar amount; so it's built</p> <p>9 in. That's what the codes are all about, but they</p> <p>10 obviously have some discounts or something. Maybe</p> <p>11 that's a minus 1 or maybe a minus 10 percent for a</p> <p>12 coupon; so that's why you end up with the net</p> <p>13 sales being a little different. It roughly would</p> <p>14 be something -- if anything, it would be more</p> <p>15 units than what it would be by dividing by 99,</p> <p>16 because if it was cheaper than 99 because someone</p> <p>17 had a 10 percent discount in every case, it would</p> <p>18 actually be 10 percent more units than if you</p> <p>19 divided that by 99. We're talking about</p> <p>20 something -- I can tell you the figure would be a</p> <p>21 certain number if divided by 99 or more.</p> <p>22 Q. In fact, I've seen \$20 off coupons.</p> <p style="text-align: right;">Page 103</p>	<p>1 name of the month.</p> <p>2 Q. If you want to put in both, you can, but</p> <p>3 it's redundant, and you don't have to repeat that.</p> <p>4 And does Glidewell keep track of a</p> <p>5 profit, a profitability of its products? Does it</p> <p>6 have a sense what the profitability is of its</p> <p>7 BruxZir crowns?</p> <p>8 A. Sure.</p> <p>9 Q. That was also information we asked for.</p> <p>10 A. Profitability? That would be the profit</p> <p>11 margin; right?</p> <p>12 Q. Yeah. I would also like that to be</p> <p>13 included. Is that something that also could be</p> <p>14 tracked by month?</p> <p>15 A. I doubt it. Anything can be put on a</p> <p>16 monthly basis.</p> <p>17 Q. I'm not trying to make work for you.</p> <p>18 A. I'm just saying anyone can come up with</p> <p>19 numbers. Those things aren't done on a monthly or</p> <p>20 a unit-by-unit basis.</p> <p>21 Q. Okay.</p> <p>22 A. Because there's costs that aren't paid</p> <p style="text-align: right;">Page 105</p>

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1 that way. For our own purposes, obviously not for
2 purposes of litigation, but always keeping track
3 of all costs and they can be spread in any number
4 of ways. You would obviously be looking at a
5 company like this at what products have the
6 highest profit margin and that might be irrelevant
7 if a product with a low profit margin has a lot
8 more units, but still it's just information like a
9 company I work for would probably keep in some
10 format or another, not on a daily basis but
11 certainly on a yearly basis and probably
12 episodically for planning purposes. So I know
13 it's something we can derive. As far as on a
14 monthly basis, all you'd be doing is just finding
15 the figure and however we would at some point in
16 time through some certain date, and then you
17 divide it by the number of units and just spread
18 it. It is a make work thing, but it wouldn't be a
19 difficult thing obviously. I just want you to
20 know that's all someone would be doing. You'd be
21 interpreting my request with me understanding it
22 the way I do and directing it somewhat, and say,
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1 "Yeah, they want to divide it out by unit based on
2 the month because they want to see it by month."
3 They would start first probably determining it
4 based on gross numbers because that's what it
5 would be. It would be number of costs associated
6 with why not use the most possible? So if we do
7 15,000 a week, for instance, why not to date?
8 We're talking at least 20 weeks or something. Why
9 not find out everything it took over a 20-week
10 period to make that many crowns, and from that
11 month on, you can spread it by month or hour.
12 I'm saying just mainly overall, you're
13 not going to get more than a number, it's a real
14 number. It's what it costs to make a particular
15 type of crown.
16 Q. I appreciate that explanation and with
17 that in mind, what I'm asking for is if you can
18 gather for me what Glidewell considers the
19 profitability of its BruxZir crown.
20 A. Okay.
21 Q. Product.
22 A. And you'd be talking about gross profit
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1 margin or net?
2 Q. Both, gross and net.
3 A. We kind of know the net, only we know
4 that it will probably be more than the financial
5 statement shows because I think the figures will
6 show that it is a higher profit margin than the
7 old-fashioned way.
8 Q. Okay. Which would explain why you guys
9 are putting a lot of effort in that area.
10 A. Well, that definitely works out well for
11 the customer too because that's partly reflected
12 in the price. So it could be even though it might
13 be more affordable to make, we might be pricing it
14 so attractively that it isn't. I don't know. I'd
15 have to look at the numbers. I'm not quite sure.
16 Q. It sounds like that's a number that may
17 exist by year for the product?
18 A. Oh, definitely, yeah. I'd say it would
19 probably exist over a certain number of units,
20 however many number of units. The more you take,
21 the more accurate they would be. All books are
22 done at least on a yearly basis; so I know we can
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1 get a yearly. I think it's possible -- a yearly
2 would be great actually.
3 Q. Let's go with yearly.
4 A. Okay.
5 Q. That sounds like something that's exists?
6 A. That would be a very accurate number.
7 Q. It's something Glidewell already kind of
8 creates in its ordinary course business?
9 A. And the costs would kind of naturally
10 flow on a year-to-year basis because that's when
11 the calendar year is.
12 Q. Okay. I'd appreciate if you can gather
13 that information and then Mr. Tachner can produce
14 that --
15 A. Okay.
16 Q. -- to us. Thank you.
17 A. So I'll just write on here plus
18 separately.
19 Q. Right. That's separate.
20 A. Net and gross profit margin, and I'll
21 just say BZ. I might as well go with the code
22 there.
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1 Q. Mr. Allred, what I'd like to ask you
2 about now is Glidewell's application for its
3 trademark in the mark BruxZir --
4 A. Okay.
5 Q. -- that we've been talking about. And in
6 particular, the mark -- why don't I just put it in
7 front of you here.
8 MR. JANKOWSKI: We'll have the court
9 reporter mark as Exhibit 122 what was submitted, I
10 believe, as Exhibit A to the complaint in this
11 lawsuit which is from the United States Patent and
12 Trademark Office, and it is a trademark
13 registration in the mark BruxZir.
14 (Exhibit No. 122 was marked for
15 identification.)
16 BY MR. JANKOWSKI:
17 Q. Mr. Allred, do you recognize Exhibit 122?
18 A. I do.
19 Q. This is the registered trademark that's
20 kind of the subject of the lawsuit that brings us
21 here today; correct?
22 A. Well, it's the Class 10 mark; so that is
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1 for the dental restoration, the custom-made dental
2 restoration.
3 Q. Do you recognize it as something that was
4 attached to the complaint?
5 A. I recognize it as our trademark document.
6 I don't remember attaching it to the complaint.
7 Q. Do you see at the bottom where it says
8 Exhibit A?
9 A. Yes.
10 Q. And you have a copy of this registration
11 in Glidewell's files; correct?
12 A. Sure. You mean the original? Yeah,
13 sure.
14 Q. Right.
15 So are you the person who was associated
16 with filing this application with the U.S. Patent
17 and Trademark Office?
18 A. I filed it.
19 Q. Okay. You filed it.
20 In that regard, what materials did you
21 provide to the PTO in connection with filing for
22 this trademark?
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1 A. Well, you can see it all there on the web
2 because they have the documentation right there,
3 but I remember it was our crown box, and it was
4 even exemplars of full contour zirconia crowns. I
5 think the box had the foam pad in it and had the
6 label of the goods on the underside of the lid so
7 that it showed through. It was a clear plastic
8 lid that crowns were separate laying next to the
9 box is how I think it was.
10 Q. When you say "exemplars," were there
11 actually crowns?
12 A. Yes, and they were described in the
13 goods.
14 Q. So these must have been crowns that were
15 made for actual patients. They were crowns made
16 to be an exhibit essentially?
17 A. Yeah, they could have been a patient's
18 crown. Once you got the file, you can make as
19 many as you want. It was probably a real crown
20 for somebody maybe. I don't know. Some model.
21 It wasn't necessarily a model of a patient. Maybe
22 it was a model of a model, but it was definitely a
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1 real crown.
2 Q. And after filing the application, did you
3 have any more actions -- interactions or
4 communications with the trademark office?
5 A. I don't think so. I think it just sailed
6 right on through.
7 Q. So you didn't speak with the trademark
8 examiner?
9 A. I definitely didn't speak with the
10 trademark examiner. If there was anything that
11 came up, it would have been in writing, but I
12 don't remember anything ever came up on it.
13 Q. Okay. Did you submit -- now, you said
14 you submitted the actual box that the crowns come
15 in; right?
16 A. Just an image.
17 Q. Or an image of the box.
18 How were the crowns provided?
19 A. They were just laying next to it, and
20 everything was photographed on kind of a felt
21 background.
22 Q. So the physical crowns didn't go to
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1 Washington, D.C.?
2 A. No.
3 Q. It was just an image?
4 A. Yeah, all together the box with the label
5 with the crowns laying next to the box.
6 Q. Okay.
7 A. It's not really a box, I guess. It's a
8 plastic case in the shape of a tooth. It has a
9 foam insert.
10 MR. JANKOWSKI: I'll have the court
11 reporter mark as the next exhibit Exhibit 123 --
12 I'm sorry. A document bearing production Nos. KDA
13 002808 through KDA 002831, and Mr. Allred, this
14 is, as you were suggesting, a printout of
15 materials from this trademark application that you
16 can access on the web as you said. I'll ask you
17 questions to see whether you agree with that.
18 THE WITNESS: Okay.
19 (Exhibit No. 123 was marked for
20 identification.)
21 BY MR. JANKOWSKI:
22 Q. If you can just briefly review
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1 Exhibit 123.
2 A. Am I looking at the same thing again
3 here?
4 Q. Some of it looks like it gets replicated.
5 I'm not sure why that is.
6 A. That's their end, huh?
7 Q. Could be.
8 A. Oh, here's their search criteria. It all
9 looks like something I've seen before.
10 Q. Okay. And if you turn to the page that
11 bears production No. 2814, it's a page with not
12 much on it actually.
13 A. Oh, you mean just the signature?
14 Q. Well, not a signature there but
15 there's --
16 MR. TACHNER: Right here.
17 MR. JANKOWSKI: Right.
18 THE WITNESS: Oh, I got it, yeah.
19 BY MR. JANKOWSKI:
20 Q. So there under the correspondence and
21 address, it has your name; correct?
22 A. Correct.
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1 Q. Which, again, is consistent with your
2 recollection that you're the one who filed this
3 particular trademark application; is that correct?
4 A. Yes.
5 Q. If you turn to the page 1 ahead of that,
6 2813, you'll see there's information on the
7 current owner that shows that the owner is James
8 R. Glidewell, Dental Ceramics, Inc.
9 Do you see that?
10 A. Correct.
11 Q. And that's accurate; correct?
12 A. That's true. Db a Glidewell Laboratories.
13 Q. There's a section on goods and services
14 where it describes the goods and services as
15 dental bridges, dental caps, dental crowns, dental
16 inlays, dental onlays and dental prostheses;
17 correct?
18 A. That's true. It's what comes with the
19 010.
20 Q. Which is the Class 10 you talked about
21 earlier?
22 A. Correct.
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1 Q. So this particular application is about
2 applying the BruxZir name to the dental
3 restorations, namely, the crowns made of zirconia;
4 correct?
5 A. Specifically out of zirconia, correct.
6 Q. Right, right. And at the bottom of this
7 page KDA 2813, there's a printout of the
8 prosecution history.
9 Do you see that?
10 A. I do.
11 Q. I think you said a moment ago it sailed
12 through prosecution pretty readily, and that's
13 reflected here as well; correct?
14 A. I think it looks like three months. Four
15 months. Three months and a week.
16 Q. Three months to a week. That's pretty
17 fast to sail through, don't you think?
18 A. I thought so.
19 Q. If you turn to page 215, there's a very
20 big presentation of the mark BruxZir; correct?
21 A. That's their doing. They make it that
22 big. They must have known something.
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<p>1 Q. That's not showing Glidewell's pride in 2 the mark? 3 A. No, that's the prescience of the USPTO. 4 I'm amazed. 5 Q. Just to be clear, the mark is in the text 6 BruxZir as opposed to a stylized presentation. 7 A. Strictly the type. 8 Q. It doesn't have to be a certain font, 9 doesn't have to be a certain color? 10 A. True. 11 Q. Because sometimes you can seek that kind 12 of thing with trademark protection; correct? 13 A. True. 14 Q. But here the protection is going to the 15 word? 16 A. Or the words. 17 Q. One thing I wanted to ask you is on -- if 18 you turn back to the page KDA 2813, some of the 19 information that gets entered in here has to do 20 with the first use of the mark by Glidewell; 21 correct? 22 A. Correct.</p> <p style="text-align: right;">Page 118</p>	<p>1 difference, I probably knew at one time. Let me 2 see here. 3 Q. In case the same date is used? 4 A. It's the same, right. I know it has 5 nothing to do with the application date. It's the 6 first use date, first use in commerce date. I 7 don't know. You'd have to refresh my recollection 8 to see if I ever knew it. 9 Q. And what is the, if you recall, what does 10 the date June 6, 2009, represent in being entered 11 here? What was it that was done then that 12 triggered entry in this application? 13 A. That would be the first date that the 14 goods were ever sold to a dentist for use in a 15 patient's mouth. 16 Q. Okay. By "sold to a dentist," it would 17 mean invoice, an invoice date? 18 A. Definitely. A prescription date probably 19 was the week ending of whatever week that was 20 billed out. I believe where that date would come 21 from. 22 Q. So you said "prescription date." What is</p> <p style="text-align: right;">Page 120</p>
<p>1 Q. And that's listed here on KDA 2813 about 2 halfway down the page. Do you see that under 3 "Goods and Services Classification"? 4 A. I see a date to the right -- oh, yeah, to 5 the right of first use date, correct. 6 Q. Right, right. 7 So what's your understanding of what is 8 asked for when it says "first use date"? 9 A. That would be the earliest time it was 10 used in commerce. 11 Q. That actually leads to one of my 12 follow-up questions which there's also an entry 13 for first used in commerce date. 14 Do you see that? 15 A. Correct. 16 Q. So do you have an understanding for what 17 the difference is between a first use date and a 18 first use in commerce date? 19 A. I don't know unless it means when maybe 20 the goods were first used versus when the mark was 21 first used. Maybe it would refresh my memory and 22 I'm not remembering. It seems if there was a</p> <p style="text-align: right;">Page 119</p>	<p>1 a prescription date? 2 A. That would be whatever date it was that a 3 doctor had given a prescription for something or 4 was given in lieu of whatever the doctor -- 5 whatever he was ordering. Because I know when 6 these first started, doctors are getting both what 7 they prescribe and also the BruxZir full contour 8 zirconia crown. 9 Q. The prescription would be for something 10 other than the BruxZir product? 11 A. I don't know that that's what this is 12 for. This is the bill date. 13 Q. So what would the prescription be for 14 that Glidewell would receive that would trigger 15 providing the BruxZir crown? 16 A. Could have gotten a prescription for a 17 crown that was, for instance, a metal occlusal, 18 otherwise a PFM crown. And then they would have 19 included that for free to let the doctor see what 20 the difference would be if he chose one over the 21 other for no additional price. Anything here 22 would have to be invoiced; so it would be</p> <p style="text-align: right;">Page 121</p>

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<p>1 something someone paid for. But the very first</p> <p>2 crowns that went out were done in that way also.</p> <p>3 This was actually for free.</p> <p>4 Q. So if they were done for free, were they</p> <p>5 providing these free crowns to dentists before</p> <p>6 this June 6, 2009 date?</p> <p>7 A. I don't think so. I think it was all at</p> <p>8 the same time.</p> <p>9 Q. So this would be reflecting a crown</p> <p>10 that's sent to a dentist?</p> <p>11 A. That would be billed, but there would be</p> <p>12 a lot of others that were done at the same time</p> <p>13 that were free.</p> <p>14 Q. Oh, I see. Okay.</p> <p>15 So the June 6, 2009, date is a billed</p> <p>16 date for a BruxZir crown that was sold to a</p> <p>17 dentist?</p> <p>18 A. That would be the date that this is, the</p> <p>19 first time it was ever billed and sold, but at the</p> <p>20 same time, there were crowns more than were billed</p> <p>21 that were actually provided for free.</p> <p>22 Q. In addition to the ones being sold?</p> <p style="text-align: right;">Page 122</p>	<p>1 A. I don't think so. I think it all</p> <p>2 happened during that week.</p> <p>3 Q. Right.</p> <p>4 So the very first dentist who was paying</p> <p>5 for a crown wasn't doing so because he'd earlier</p> <p>6 got a free crown, correct, because he's paying for</p> <p>7 it on June 6.</p> <p>8 A. It could have all been in the same week.</p> <p>9 Q. Oh, so he got a free crown earlier in the</p> <p>10 week, and he decided to buy a crown later in the</p> <p>11 same week?</p> <p>12 A. True.</p> <p>13 Q. You mentioned advertising. Do you know</p> <p>14 when Glidewell began advertising the BruxZir name?</p> <p>15 A. I don't know the exact dates. I know</p> <p>16 we've probably gone through all that. You might</p> <p>17 have even got that from Jim. I think it was at</p> <p>18 the same time. Probably through e-mail blasts.</p> <p>19 Q. And do you know if any of those e-mail</p> <p>20 blasts were before June 6, 2009?</p> <p>21 A. No, I don't know.</p> <p>22 Q. I'll have you briefly look back at</p> <p style="text-align: right;">Page 124</p>
<p>1 A. Exactly.</p> <p>2 Q. The ones that were being sold, were those</p> <p>3 being sold to dentists who were writing</p> <p>4 prescriptions out for the BruxZir product?</p> <p>5 A. Exactly.</p> <p>6 Q. Since this was a new product, how did</p> <p>7 dentists know to write a prescription for the</p> <p>8 BruxZir product?</p> <p>9 A. Well, in addition to whatever advertising</p> <p>10 there was, one of the best advertising was what I</p> <p>11 just described. It was a situation where perhaps</p> <p>12 a full contour zirconia crown might be what the</p> <p>13 doctor would have rather prescribed if he had</p> <p>14 known about it. So he got both and got a chance</p> <p>15 to try both; so he could see the fit, the look</p> <p>16 compared to what he actually ordered, and he'd</p> <p>17 choose one over the other and had no difference in</p> <p>18 price. It was strictly a way to point the doctor</p> <p>19 to a new option.</p> <p>20 Q. At this point in June, June 6, 2009, you</p> <p>21 hadn't yet been providing out the free BruxZir</p> <p>22 crowns; correct?</p> <p style="text-align: right;">Page 123</p>	<p>1 Exhibit 122. This was the one-page registration.</p> <p>2 You might have put it underneath the previous</p> <p>3 exhibit. You might have put it at the bottom.</p> <p>4 A. The trademark?</p> <p>5 Q. Yes.</p> <p>6 So one thing I see on here is there's a</p> <p>7 reg number, 3739663.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. That's a number associated with this</p> <p>11 formal registration by the trademark office;</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And there's another number if you look</p> <p>15 down towards the bottom which is listed as a</p> <p>16 serial number, 77-761757.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And that's another number associated with</p> <p>20 the application for trademark; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And this also shows the date on</p> <p style="text-align: right;">Page 125</p>

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<p>1 which it was filed which was June 17, 2009;</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Is that consistent with your recollection</p> <p>5 as to when you filed the trademark application?</p> <p>6 A. It is.</p> <p>7 Q. So it was shortly after the first use</p> <p>8 date that you put in the application; correct?</p> <p>9 A. True.</p> <p>10 Q. And the registration itself came out, it</p> <p>11 looks like, on January 19, 2010. Correct?</p> <p>12 A. I saw that on here. Is it on here too?</p> <p>13 Q. It's on Exhibit 22 as well. Underneath</p> <p>14 the reg number?</p> <p>15 A. Oh, up here. Correct.</p> <p>16 Q. And at the very bottom of Exhibit 122,</p> <p>17 there's a reference to Kevin Corwin as the</p> <p>18 examining attorney.</p> <p>19 Do you see that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Does that name ring a bell at all for</p> <p>22 you?</p> <p style="text-align: right;">Page 126</p>	<p>1 suppose.</p> <p>2 Q. Okay. And you didn't play any role in</p> <p>3 the searching that the examiner did; correct?</p> <p>4 A. No.</p> <p>5 Q. One thing I notice is it doesn't look</p> <p>6 like the examiner searched for the term "bruxer,"</p> <p>7 meaning a patient with bruxism; correct?</p> <p>8 B-r-u-x-e-r.</p> <p>9 A. I don't see that on there. I see brux</p> <p>10 with asterisks before and after; so I suppose</p> <p>11 that's the same way of searching for that.</p> <p>12 Q. Do you understand the language there? I</p> <p>13 see where it says "brux," and I see bi and ti and</p> <p>14 reference to be not dead.</p> <p>15 Do you know what that means?</p> <p>16 A. I think so.</p> <p>17 Q. What does that mean?</p> <p>18 A. It looks to me like he's looking for the</p> <p>19 letters b-r-u-x if they occur in the middle or end</p> <p>20 or anywhere in a trademark and is still alive, I</p> <p>21 suppose.</p> <p>22 Q. What's the bi refer to, the bi, ti in</p> <p style="text-align: right;">Page 128</p>
<p>1 A. It doesn't.</p> <p>2 Q. Which makes sense because you didn't</p> <p>3 really deal with him?</p> <p>4 A. I didn't.</p> <p>5 Q. Okay. And inside Exhibit 123 if you turn</p> <p>6 to page KDA 2810, inside that document, correct.</p> <p>7 Turn in about four pages.</p> <p>8 A. Oh, okay.</p> <p>9 Q. To 2810. This is another copy of the</p> <p>10 registration. It's the same as Exhibit 122;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. It also shows that the class of goods is</p> <p>14 Class 10 on the formal registration; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Now, if you turn to page 2820 within the</p> <p>17 same document towards the end, here you see, and I</p> <p>18 think I heard you mention this earlier when you</p> <p>19 were looking through the document at the</p> <p>20 beginning, what is shown at KDA 2820?</p> <p>21 A. It looks like a search criteria that this</p> <p>22 examiner was using to see if the mark was taken, I</p> <p style="text-align: right;">Page 127</p>	<p>1 brackets? Do you see that?</p> <p>2 A. Yeah. Is that in the goods maybe? I'm</p> <p>3 not sure. I don't know. What is it?</p> <p>4 Q. I don't know.</p> <p>5 A. I'm not going to guess then.</p> <p>6 Q. No, I don't want you to guess. I'm just</p> <p>7 wondering if you knew.</p> <p>8 A. I'm not sure.</p> <p>9 Q. And you didn't do anything to educate</p> <p>10 Mr. Corwin about the significance of the word</p> <p>11 "bruxer" in the dental industry; is that accurate?</p> <p>12 A. I don't remember ever talking to him.</p> <p>13 Q. Your normal practice was to fill out</p> <p>14 trademark applications without interacting with</p> <p>15 the trademark examiner more than you had to. Is</p> <p>16 that fair?</p> <p>17 A. That's true. That's a fact. That's how</p> <p>18 this went. It's in their system. It really just</p> <p>19 fell into place.</p> <p>20 Q. And if you turn to the page KDA 2822; so</p> <p>21 a few more pages forward in the document or toward</p> <p>22 the back. I'm sorry.</p> <p style="text-align: right;">Page 129</p>

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1 A. Towards the back, yeah.
2 Q. Is this a reproduction of the
3 illustration you were discussing earlier when you
4 said there were actual examples of crowns you had
5 provided?
6 A. It is.
7 Q. There you can see the BruxZir brand on
8 the sticker on the container; correct?
9 A. True.
10 Q. Did you do any searching yourself on
11 behalf of Glidewell before you filed this
12 application just to see whether BruxZir was a good
13 mark to be using?
14 A. I did.
15 Q. And what kind of searching did you do?
16 Do you recall?
17 A. I went to their site, and I looked for
18 anything that had the word brux in it, and I also
19 Googled anything there was to find on Google.
20 Q. When you say "in their site," you're
21 talking about the trademark office site?
22 A. Yes.

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1 Q. And you did a Google search for brux as
2 well?
3 A. I did.
4 Q. Any other search terms that you looked
5 for other than brux?
6 A. A lot of different search terms at the
7 time because the name was not established until
8 this was finally adopted. So I was doing a lot of
9 different searches on a lot of different names.
10 Q. Names that were candidates that you were
11 considering?
12 A. Exactly.
13 Q. Do you recall what candidates existed
14 before you -- before Glidewell decided on BruxZir?
15 A. I don't. I just remember the general
16 idea of things that had the word zir in it.
17 Q. And so did you do searching on zir,
18 z-i-r, as well?
19 A. When something looked like it was a
20 candidate, like I say, not just thrown out there
21 because there was maybe 40 or 50 ideas were going
22 back and forth here and there, but not on every

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1 single one, just something that became a focus.
2 Q. My understanding is that Mr. Shuck is the
3 one who originated the name BruxZir. Is that
4 consistent with your recollection?
5 A. It is.
6 Q. And he ran the name by various management
7 people at Glidewell including Dr. DiTolla;
8 correct?
9 A. Dr. DiTolla is the person that he talked
10 to about it who was at a dental show at the time.
11 Q. And he shared the name with an audience
12 of dentists at the time. Is that your
13 understanding?
14 A. It is, yeah.
15 Q. Let me show you another exhibit here.
16 MR. JANKOWSKI: I'll have the court
17 reporter mark as Exhibit 124 a one-page
18 document --
19 THE WITNESS: Are we done with this one?
20 BY MR. JANKOWSKI:
21 Q. Yes, you can put that one away.
22 A one-page document bearing the

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1 production number Boatright 000085.
2 (Exhibit No. 124 was marked for
3 identification.)
4 BY MR. JANKOWSKI:
5 Q. Mr. Allred, do you recognize the document
6 marked as Exhibit 124?
7 A. Is this our serial number here? I don't
8 know.
9 Q. Yes, you'll see halfway down you'll see
10 the serial number 77761757.
11 Do you see that?
12 A. I see that.
13 Q. If you compare it with Exhibit 122 you'll
14 see it's the same serial number.
15 A. Same serial number?
16 Q. Correct.
17 A. I've never actually seen this page.
18 Q. Do you recognize this page as a -- do you
19 see halfway down the page you see a reference to
20 the trademark status and document retrieval with
21 the acronym TSDR?
22 Do you see that?

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<p>1 A. Somewhere in here it will say retrieval?</p> <p>2 Q. Right. It's about halfway down the page.</p> <p>3 A. Oh, you mean TSDR?</p> <p>4 Q. Yes.</p> <p>5 A. I see that.</p> <p>6 Q. Do you have a familiarity with what a</p> <p>7 TSDR is?</p> <p>8 A. I think it's one of the USPTO subsystems</p> <p>9 for accessing their data, I think.</p> <p>10 Q. And have you used that system yourself?</p> <p>11 A. I probably have if that's the only way to</p> <p>12 get to certain information I might have looked</p> <p>13 for. I don't really remember what all is in</p> <p>14 there. Is that what you would look at to, for</p> <p>15 instance, pull up a copy of your application?</p> <p>16 Q. Right. It gives you -- it's a user</p> <p>17 interface; so you can go on the trademark website</p> <p>18 and access information.</p> <p>19 A. I have used it then.</p> <p>20 Q. In fact, if you look at this printout, is</p> <p>21 that what it looks like to you is a printout from</p> <p>22 the USPTO website that's giving you the ability to</p> <p style="text-align: right;">Page 134</p>	<p>1 and Trademark Office to prevent the registration</p> <p>2 of the mark in Class 5? That's what I would guess</p> <p>3 from looking at this. That's all I would know. I</p> <p>4 don't know if that's it.</p> <p>5 Q. Okay. And there's one listed for</p> <p>6 November 9, 2011, and a second one listed for</p> <p>7 March 15, 2012.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do those dates have any significance to</p> <p>11 you?</p> <p>12 A. Well, the fact that this one on the top</p> <p>13 here is fairly recent, March; so it would have to</p> <p>14 be something that's happened fairly recently.</p> <p>15 Q. I'm just asking if you have an</p> <p>16 understanding for what happened on that date?</p> <p>17 A. I could confirm if that's something your</p> <p>18 law firm has done on behalf of the client. If</p> <p>19 it's on behalf of something Attorney Holland did,</p> <p>20 I don't know if I remember or not what that would</p> <p>21 be.</p> <p>22 Q. Okay. You can put that exhibit down.</p> <p style="text-align: right;">Page 136</p>
<p>1 access documents associated with Glidewell's</p> <p>2 trademark we've been discussing?</p> <p>3 A. It does. It looks like if I checked the</p> <p>4 box here for specimen and it says "JPEG," I would</p> <p>5 get that image there that we looked at earlier.</p> <p>6 Q. Right.</p> <p>7 And, in fact, there's entries here that</p> <p>8 correspond to the filing of the application and</p> <p>9 the issuance of a registration certificate, a</p> <p>10 notice of publication, and so on.</p> <p>11 Do you see that in the bottom half?</p> <p>12 A. I do.</p> <p>13 Q. One thing I see is there's two entries</p> <p>14 there, more recent entries in the chronology</p> <p>15 that's known in Exhibit 124. It says, "NOS notice</p> <p>16 of suit incoming."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Do you have an understanding of what that</p> <p>20 notice is referring to?</p> <p>21 A. Is that when Attorney Holland on behalf</p> <p>22 of the defendant filed something with the Patent</p> <p style="text-align: right;">Page 135</p>	<p>1 So this trademark BruxZir associated with</p> <p>2 the registration at Exhibit 122 registered in</p> <p>3 January, 2010; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And did Glidewell begin doing anything</p> <p>6 different once it received this registration?</p> <p>7 A. No.</p> <p>8 Q. Did it change its marketing materials?</p> <p>9 A. No.</p> <p>10 Q. How about the use of a circle R as</p> <p>11 opposed to a TM? Did it make any changes in that</p> <p>12 regard?</p> <p>13 A. When we got the circle R, we started</p> <p>14 using it.</p> <p>15 Q. This January, 2010, date, is that</p> <p>16 associated with when Glidewell would have started</p> <p>17 using the circle R?</p> <p>18 A. Yes.</p> <p>19 Q. On which products did Glidewell begin</p> <p>20 using the circle R?</p> <p>21 A. On the full contour zirconia crowns sold</p> <p>22 to dentists.</p> <p style="text-align: right;">Page 137</p>

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<p>1 Q. Any other products?</p> <p>2 A. No.</p> <p>3 Q. How about today? Do you know whether</p> <p>4 Glidewell applies its circle R product designation</p> <p>5 to products other than the full contour zirconia</p> <p>6 crowns?</p> <p>7 A. I don't believe it does, but I suppose it</p> <p>8 could since we have the circle R in Europe. It</p> <p>9 could also apply to blocks, but I don't think we</p> <p>10 do.</p> <p>11 Q. Now, you said a circle R in blocks. So</p> <p>12 Glidewell has a registration to apply BruxZir to</p> <p>13 its blocks sold to Europe?</p> <p>14 A. We have the circle R for that, yes.</p> <p>15 Q. But I take it the packaging is different</p> <p>16 for goods going to Europe than it is for goods</p> <p>17 going to customers in the U.S.; correct?</p> <p>18 A. I'm not sure about that. I don't know.</p> <p>19 It could be a different kind of box they use</p> <p>20 there. I'm not sure.</p> <p>21 Q. So Glidewell might be using the circle</p> <p>22 R -- BruxZir with a circle R on its packaging of</p> <p style="text-align: right;">Page 138</p>	<p>1 materials. So that would be Mike Cash.</p> <p>2 Q. And he works underneath Mr. Shuck;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And how about on Glidewell's website? Do</p> <p>6 you monitor how the circle R is used on the</p> <p>7 website?</p> <p>8 A. Yes. I don't go there specifically to</p> <p>9 see if anyone has changed something in the</p> <p>10 meantime, but I'm there quite often.</p> <p>11 Q. If you see a circle R that shouldn't be</p> <p>12 there, you'll let somebody know about it?</p> <p>13 A. Definitely.</p> <p>14 Q. For the website, would that also be</p> <p>15 something where you say something to Mike Cash?</p> <p>16 A. Yes, same thing. That's also the same</p> <p>17 group that would keep the website up to date.</p> <p>18 Q. And e-mail blasts be the same answer?</p> <p>19 You go to Mike Cash?</p> <p>20 A. If there was a change in an e-mail, if</p> <p>21 somehow it had been used inappropriately and I had</p> <p>22 seen that, definitely I would raise the issue with</p> <p style="text-align: right;">Page 140</p>
<p>1 milling blanks sent to customers in the United</p> <p>2 States?</p> <p>3 A. Not in the United States, no.</p> <p>4 Q. Okay. So it's not using the circle R on</p> <p>5 its packaging for milling blocks being sent to</p> <p>6 customers in the United States?</p> <p>7 A. No.</p> <p>8 Q. How about on its advertising materials?</p> <p>9 A. No. TM.</p> <p>10 Q. Do you monitor that?</p> <p>11 A. Yeah. I would say yes.</p> <p>12 Q. How do you monitor that?</p> <p>13 A. Well, whenever I become aware of an</p> <p>14 improper use of the mark, I notice it.</p> <p>15 Q. And if you notice it, what do you do?</p> <p>16 A. Well, we only use it the proper way; so</p> <p>17 whenever I notice it, I make sure it is used the</p> <p>18 proper way.</p> <p>19 Q. Who do you talk to about that?</p> <p>20 A. The best person for me to talk to would</p> <p>21 be the person who works directly with the people</p> <p>22 that actually do all the design for all of our</p> <p style="text-align: right;">Page 139</p>	<p>1 Mike Cash.</p> <p>2 Q. And what about if it's involving</p> <p>3 materials sold by Glidewell Direct? Is Mike Cash</p> <p>4 still the person to talk to?</p> <p>5 A. Yeah, because that would be a label.</p> <p>6 Q. So Mike Cash handles Glidewell Direct</p> <p>7 marketing as well?</p> <p>8 A. Well, that's for sure, but he would</p> <p>9 handle all design and printing.</p> <p>10 Q. Now, Glidewell's -- let me set a</p> <p>11 foundation here.</p> <p>12 Glidewell has a relationship with a</p> <p>13 number of authorized labs who purchase the BruxZir</p> <p>14 milling blanks; correct?</p> <p>15 A. That's true.</p> <p>16 Q. So those dental labs have the right to</p> <p>17 use the BruxZir name associated with the product</p> <p>18 they make with the BruxZir milling blanks;</p> <p>19 correct?</p> <p>20 A. Our authorized labs are providing the</p> <p>21 Class 10 goods to dentists. So they probably will</p> <p>22 always be using the circle R.</p> <p style="text-align: right;">Page 141</p>

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<p>1 Q. Right.</p> <p>2 You anticipated my next question which</p> <p>3 is: Do you monitor what the use of the BruxZir</p> <p>4 name is by Glidewell's 180 or so authorized labs?</p> <p>5 A. I have to say yes because I know we've</p> <p>6 had to contact labs now and again. But it's not</p> <p>7 anything that we have a program of actually</p> <p>8 following on any periodic basis. Just if we do</p> <p>9 become aware of any improper use, we definitely</p> <p>10 would do something about it.</p> <p>11 Q. And the something about it is you'll</p> <p>12 notify them about the proper usage to follow?</p> <p>13 A. Definitely.</p> <p>14 Q. And who will notify the authorized lab or</p> <p>15 who will contact them? Is that you personally or</p> <p>16 somebody else?</p> <p>17 A. No, that would be someone like Robin</p> <p>18 Bartolo who has a relationship with them and</p> <p>19 probably deals with them on a regular basis</p> <p>20 anyway.</p> <p>21 Q. Oh, since you raised Mr. Bartolo's name,</p> <p>22 I just want to confirm something. In talking</p> <p style="text-align: right;">Page 142</p>	<p>1 think we ought to wait or anything. That's a very</p> <p>2 responsive company. I'm sure it was pretty much</p> <p>3 about the same time.</p> <p>4 Q. And the instructions to start using a</p> <p>5 circle R, would that have gone to Mike Cash as</p> <p>6 well, or would that go to Jim Shuck or someone</p> <p>7 else?</p> <p>8 A. Definitely both of them would have been</p> <p>9 something that would have been probably worthwhile</p> <p>10 sharing with everyone in the company. But it</p> <p>11 wouldn't have necessarily been me sharing it.</p> <p>12 Probably would have been me telling Jim Shuck</p> <p>13 about it.</p> <p>14 Q. And in addition to the marketing done by</p> <p>15 Mr. Shuck and Mr. Cash, Glidewell also has</p> <p>16 information being conveyed by Dr. DiTolla as well;</p> <p>17 correct?</p> <p>18 A. Information conveyed about?</p> <p>19 Q. About the BruxZir crowns.</p> <p>20 A. He is definitely a purveyor of</p> <p>21 information about anything to do with dentistry,</p> <p>22 and he promotes that material.</p> <p style="text-align: right;">Page 144</p>
<p>1 about these authorized labs, I asked Mr. Bartolo</p> <p>2 whether there were written agreements between</p> <p>3 Glidewell and the authorized labs that contained</p> <p>4 written provisions associated with things like the</p> <p>5 right to use the trademark. Mr. Bartolo said he</p> <p>6 did not believe there were any such written</p> <p>7 agreements. Is that your understanding as well?</p> <p>8 A. That's correct. There isn't.</p> <p>9 Q. I was going to say I think you would know</p> <p>10 better than Mr. Bartolo for sure since it's a</p> <p>11 legal document, and you being the general counsel.</p> <p>12 Do you have an understanding for how</p> <p>13 quickly after the registration was issued by the</p> <p>14 PTO in January, 2010, that Glidewell started</p> <p>15 adopting the circle R?</p> <p>16 A. I could only guess that it was almost</p> <p>17 immediately.</p> <p>18 Q. You don't recall?</p> <p>19 A. I think I do kind of recall telling</p> <p>20 everybody we got the circle R, and I'm sure it</p> <p>21 would have been incorporated in anything beyond</p> <p>22 that. I don't recall ever having any reason to</p> <p style="text-align: right;">Page 143</p>	<p>1 Q. So he lectures to dentists, for example;</p> <p>2 correct?</p> <p>3 A. He does.</p> <p>4 Q. And do you monitor the use of the BruxZir</p> <p>5 trademark in the materials that are used and</p> <p>6 developed by Dr. DiTolla?</p> <p>7 A. Any materials he uses probably are</p> <p>8 prepared by Glidewell Laboratories under his</p> <p>9 instruction.</p> <p>10 Q. I guess what I'm wondering about is do</p> <p>11 you or does somebody else monitor the marketing</p> <p>12 materials or I won't even call them marketing</p> <p>13 materials. Whatever materials Dr. DiTolla is</p> <p>14 using when he's lecturing to dentists to see how</p> <p>15 the BruxZir mark is being used?</p> <p>16 A. I don't know about the word "monitor,"</p> <p>17 but I'm very aware of everything that goes out to</p> <p>18 the public.</p> <p>19 Q. And how are you aware of it?</p> <p>20 A. I see it myself just like the public</p> <p>21 does. It's right on our website.</p> <p>22 Q. Does Dr. DiTolla pass it by you or by</p> <p style="text-align: right;">Page 145</p>

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<p>1 Mr. Shuck or somebody for authorization before he</p> <p>2 uses the materials?</p> <p>3 A. Not for authorization, no.</p> <p>4 Q. Does he pass it by you for comments or</p> <p>5 feedback?</p> <p>6 A. Very possibly he could run ideas by</p> <p>7 anybody. That's possible.</p> <p>8 Q. But that's not like a required procedure</p> <p>9 before he presents to dentists?</p> <p>10 A. Well, he is the director of education; so</p> <p>11 that is really his responsibility.</p> <p>12 Q. Right. And I questioned him about that.</p> <p>13 He said the same thing about that. In fact, he</p> <p>14 testified that he really makes the videos that</p> <p>15 he's in. He's responsible for the content;</p> <p>16 correct?</p> <p>17 A. That's true. But the resources he's</p> <p>18 using is Glidewell Laboratories and those people</p> <p>19 are under Mike Cash.</p> <p>20 MR. JANKOWSKI: I'll have the court</p> <p>21 reporter mark as Exhibit 125 a seven-page document</p> <p>22 produced by Glidewell in this case with the</p> <p style="text-align: right;">Page 146</p>	<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. This one has a later serial number</p> <p>4 because it's filed later in time. I'll just read</p> <p>5 it off of the front page of Exhibit 125. It</p> <p>6 appears to be 85332886.</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Okay. And do you know what date this</p> <p>10 was -- this application was filed on?</p> <p>11 A. If I look on here, I would.</p> <p>12 Q. Sure, you can look on there.</p> <p>13 A. May 27, 2011.</p> <p>14 Q. Okay. Is that consistent with your</p> <p>15 recollection of when you filed the application?</p> <p>16 A. It doesn't seem like that along ago, does</p> <p>17 it? It seems like a lot longer ago. I guess that</p> <p>18 is consistent with the facts.</p> <p>19 Q. So it was roughly two years after the</p> <p>20 earlier application; correct?</p> <p>21 A. Let's see. I guess the other one was</p> <p>22 June, 2009, and this is May, 2011. So that's</p> <p style="text-align: right;">Page 148</p>
<p>1 production No. GL 223.</p> <p>2 (Exhibit No. 125 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. JANKOWSKI:</p> <p>5 Q. Mr. Allred, can you just briefly review</p> <p>6 Exhibit 125 for me, please?</p> <p>7 A. Okay. I know what this would be. Sure.</p> <p>8 Q. What is Exhibit 125?</p> <p>9 A. It is a filing here in the United States</p> <p>10 for the mark under international Class 5.</p> <p>11 Q. So this is the other patent</p> <p>12 application -- I'm sorry, not patent, the other</p> <p>13 trademark application that we talked about earlier</p> <p>14 for the name BruxZir. This one being for the</p> <p>15 milling blanks; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And your name appears on this document as</p> <p>18 the correspondence person who filed the</p> <p>19 application; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Like the other application, this one is</p> <p>22 seeking protection just in the name BruxZir;</p> <p style="text-align: right;">Page 147</p>	<p>1 roughly two years.</p> <p>2 Q. Okay. Is there a particular -- well,</p> <p>3 first of all, in terms of first use, do you know</p> <p>4 what date was provided -- that you provided for</p> <p>5 this application associated with the first use of</p> <p>6 the mark or first use in commerce of the mark?</p> <p>7 A. I'd have to look as far as what the exact</p> <p>8 date would be.</p> <p>9 Q. If you look on page 2 of the document, I</p> <p>10 think it's listed there.</p> <p>11 A. Page 2. I'm on that page. Page 2 of 7?</p> <p>12 Q. Correct.</p> <p>13 A. First use anywhere and first use in</p> <p>14 commerce are the same, 11/10/2009.</p> <p>15 Q. The blanks are first being sold by</p> <p>16 Glidewell with the BruxZir mark in November of</p> <p>17 2009. Is that accurate?</p> <p>18 A. Correct. That makes more sense. I</p> <p>19 thought things were much further back. Very good.</p> <p>20 Q. Blanks were already being sold in 2009.</p> <p>21 They just didn't have the application filed</p> <p>22 promptly for that?</p> <p style="text-align: right;">Page 149</p>

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1 A. For the circle R, that's true.
2 Q. Staying on page 2 of this exhibit, the
3 identification of the goods here is for dental
4 ceramics this time; correct?
5 A. That's correct. That's what the 005
6 class is.
7 Q. Right.
8 And do you have an understanding as to
9 whether this application has issued as a
10 registered mark?
11 A. I do understand. I know that it hasn't.
12 Q. If you turn to page 7 of Exhibit 125, I
13 see an illustration of a box.
14 Do you see that?
15 A. Last page?
16 Q. Correct.
17 A. Yeah, I see it.
18 Q. Is this what's been produced here as
19 Exhibit 125, is this a complete representation of
20 the patent application -- excuse me, the trademark
21 application you filed with the Patent and
22 Trademark Office?
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1 A. It is.
2 Q. Okay. We had the discussion earlier
3 about materials provided. You didn't provide any
4 additional materials beyond what's shown in this
5 exhibit?
6 A. No additional materials.
7 Q. You haven't had any telephone calls with
8 the examiner in this case either; is that correct?
9 A. I don't remember this being anything
10 other than something that sailed right on through
11 too unless he might have through some writing
12 asked if it was the same company or not. I'd have
13 to look to see if there was anything like that.
14 Still James R. Glidewell Dental Ceramics, Inc., so
15 I don't know why he would have called, but if
16 there was, it would strictly be that, if we were
17 the owner of the previous mark. I don't remember
18 getting such a call.
19 Q. And the image that's on the last page of
20 Exhibit 125, that's an example showing the
21 packaging for the zirconia milling blanks using
22 the BruxZir mark; correct?
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1 A. That's correct.
2 Q. It has a little TM next to it because, of
3 course, you don't have a registration in BruxZir
4 for use with the milling blanks; correct?
5 A. That's correct. It's still that way.
6 Q. So your understanding is to this day when
7 used in connection with zirconia milling blanks,
8 Glidewell's going to use the TM and not the circle
9 R; is that correct?
10 A. Correct. My only caveat was in Europe, I
11 suppose, we could still use the circle R, but I
12 don't know if we do.
13 Q. But in the U.S. you would not use the
14 circle R?
15 A. We would not.
16 Q. In this document, Exhibit 125 that was
17 produced by Glidewell, this is kind of a business
18 record of Glidewell's that you have a copy of this
19 application in Glidewell's files; is that correct?
20 A. It is correct.
21 Q. Okay. This is a true and correct copy of
22 that document from your files?
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1 A. It is.
2 Q. Okay.
3 MR. JANKOWSKI: I'll have the court
4 reporter mark as Exhibit 126 a two-page document
5 bearing production Nos. Boatright 83 and Boatright
6 84.
7 (Exhibit No. 126 was marked for
8 identification.)
9 THE WITNESS: Is Boatright one of your
10 employees that run that off? Where did that come
11 from?
12 BY MR. JANKOWSKI:
13 Q. Boatright is actually the name of an
14 expert that was retained by Keating Dental Arts
15 for this case just to provide opinions on the
16 practice of examining trademarks in the U.S.
17 Patent and Trademark Office. So she provided an
18 expert opinion in the case and also produced a
19 number of documents, some of which are these that
20 you're looking at here.
21 A. You mean before he ever filed for his
22 trademark?
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1 Q. No, no, no. This has all happened in the
2 last couple weeks.
3 A. Okay.
4 Q. If I have you just look at Exhibit 126,
5 would you agree with me this is another printout
6 like the earlier exhibit we looked at which is a
7 printout off the USPTO website associated with the
8 TSDR system?
9 A. I see that.
10 Q. This one is for the Class 5 application
11 of BruxZir.
12 Do you see that? Do you see the serial
13 number about halfway down the first page?
14 A. Oh, I see that, yeah.
15 Q. Serial number is 85287029.
16 Do you see that?
17 A. I do.
18 MR. TACHNER: Are you stating, David,
19 that it is the same serial number as the one we
20 just looked at?
21 MR. JANKOWSKI: It's not the same serial
22 number, is it?

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1 MR. TACHNER: It doesn't appear to be.
2 MR. JANKOWSKI: No, it's a different
3 serial number.
4 MR. TACHNER: This appears to be
5 something called Embauer.
6 MR. JANKOWSKI: Right.
7 MR. TACHNER: I don't think this has
8 anything to do with this litigation.
9 MR. JANKOWSKI: Whether or not it has to
10 do with the litigation, I'm not going to ask
11 Mr. Allred about it.
12 MR. TACHNER: Good. Because I don't
13 think he could answer it.
14 MR. JANKOWSKI: You're right. I don't
15 think he'll be able to answer it either.
16 Let me show you another exhibit.
17 MR. TACHNER: But you did mark it?
18 MR. JANKOWSKI: It was marked. We'll
19 move on to another one.
20 I'll have the court reporter mark as
21 Exhibit 127 a printout from the website trademarks
22 Justia.com. It's a six-page printout, and it's

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1 associated with the trademark BruxZir.
2 (Exhibit No. 127 was marked for
3 identification.)
4 BY MR. JANKOWSKI:
5 Q. Mr. Allred, I just wanted to show you
6 this. Are you familiar with this particular
7 website which just provides information online
8 about trademarks. It's not the USPTO website, but
9 it's another website that provides information on
10 trademarks.
11 A. It seems like I've seen the Justia name.
12 I don't know that I associated that just with
13 trademarks. I know there are sites for that.
14 Trademarkia I've seen. I don't think I've used
15 the site.
16 Q. On the front page of Exhibit 127, there's
17 a status listed for this particular trademark
18 application.
19 Do you see that?
20 A. What's this thing right here?
21 Opposition? This is Whittaker Brown? Is this
22 from your law office here? Employee named

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1 Whittaker Brown?
2 Q. Where are you reading?
3 A. Right here on the second page.
4 Opposition date. Attorney, it says Keith Allred
5 and employee named Whittaker Brown. I don't know
6 who Whittaker Brown is.
7 Q. I don't know who Whittaker Brown is
8 either. But if you look on the first page, do you
9 see the status listing, "Opposition pending"?
10 A. Yeah.
11 Q. And this is for the serial number which
12 is listed down below there 85332886.
13 Do you see that?
14 A. I see that.
15 Q. This one is Glidewell's trademark
16 application it's referring to; correct?
17 A. For what? Class 5? I see Class 5 here.
18 Q. Right.
19 So this is for Glidewell's Class 5
20 application; correct?
21 A. It looks like it is. Without pulling
22 anything else out of the bottom of this stack, it

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1 definitely looks like that would be it.
2 Q. Is this consistent with your
3 understanding that there is an opposition pending
4 to Glidewell's BruxZir mark for Class 5?
5 A. If this is something that happened fairly
6 recently here? This is 11/1/2011. Oh, is
7 this what we already talked about? This is done
8 by Attorney Holland?
9 Q. I'm not sure. If you look down, for
10 example, to -- there's no page numbers on it here,
11 but there's a listing three pages from the back
12 end of the document that lists trademark events at
13 the top.
14 Do you see that?
15 A. Yeah.
16 Q. This goes through a chronology starting
17 with the filing of the application in May, 2011.
18 Do you see that?
19 A. At the very top?
20 Q. Right.
21 A. Correct.
22 Q. And then it goes down to the bottom, and
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1 you see in December, 2011, it says, "Opposition
2 instituted."
3 Do you see that?
4 A. Yeah, two down below when it was approved
5 for publication in the official Gazette.
6 Q. Right.
7 So is that consistent with your
8 application -- excuse me, your understanding of
9 the status of this?
10 A. It is if this is from Attorney Holland
11 and this is his opposition to having a
12 registration for the mark in Class 5.
13 Q. You keep mentioning Attorney Holland.
14 What's your understanding as to what Mr. Holland
15 did?
16 A. My understanding is he was hired by
17 Keating Dental Arts to oppose -- well, as part of
18 his representation. I guess it was his
19 recommendation or the client or both -- I don't
20 know. Obviously, I don't know what their
21 misunderstanding is -- to oppose the registration
22 of our trademark in Class 5 as part of their
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1 defense in this matter against our charge of
2 trademark infringement. That's my understanding.
3 Of course, the trademark infringement is in
4 Class 10, and this is in Class 5.
5 Q. Right.
6 MR. JANKOWSKI: I'll have the court
7 reporter mark as Exhibit 128 a two-page document
8 from the United States Patent and Trademark
9 Office, trademark trial and appeal board, mailed
10 February 3, 2012.
11 (Exhibit No. 128 was marked for
12 identification.)
13 BY MR. JANKOWSKI:
14 Q. Mr. Allred, do you recognize Exhibit 128?
15 A. I know what it's about.
16 Q. What is this about?
17 A. It looks to me like someone writing on
18 behalf of the trademark office thinks we should
19 have just laid down and let them oppose the
20 registration of the mark in Class 5, and it looks
21 like we didn't see it his way, and it looks like
22 he's telling me I'm really full of it.
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1 Q. Do you know whether this particular
2 opposition is associated with Glidewell's Class 5
3 mark, application for a Class 5 mark?
4 A. I think I should look at it more closely.
5 I just assumed it was. If it was associated with
6 what we were just talking about earlier, the
7 decision of the defendant to oppose our mark in
8 Class 5, I understand it. If it's something
9 different than that, I'll have to look at it more
10 closely.
11 Q. Let me ask you a question which is you're
12 aware that Glidewell is opposing Keating's
13 trademark application for its mark KDZ Bruxer,
14 B-r-u-x-e-r; correct?
15 A. Of course. We tried to stop everything
16 before he even infringed it in public. That was
17 the first thing we did. We could have stopped
18 there.
19 Q. So there's at least two opposition
20 proceedings existing between the -- in front of
21 the TPAB now; correct?
22 A. Oh, okay. All right. Is that what this
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1 is then?
2 Q. I'm just asking you whether you know
3 whether this has to do -- which of those two
4 oppositions this has to do --
5 A. I really don't know. I guess I can look
6 at this real closely and try to figure it out.
7 Q. But you do understand there's oppositions
8 going both ways, Glidewell has an opposition to
9 Keating's pending application and Keating has an
10 opposition in place to Glidewell's pending
11 application for the Class 5 use of the mark;
12 correct?
13 A. Well, yes, but our opposition was to the
14 application by KDA for a confusingly similar mark
15 in Class 10. I don't know if this has anything to
16 do with it or not. I don't know which class this
17 is talking about. I can look at it close. I
18 don't know exactly what it is, but I do understand
19 that we did oppose before the Patent and Trademark
20 Office as soon as we were legally allowed to do
21 the issuance of a trademark in Class 10 of a
22 confusingly similar mark. I do know that after
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1 that through his earlier attorney representation,
2 they opposed our application for a trademark in a
3 completely different class all together.
4 Q. So Glidewell's opposition is associated
5 with Keating's mark in Class 10?
6 A. Correct.
7 Q. And Keating's opposition is directed at
8 Glidewell's pending application in Class 5;
9 correct?
10 A. Correct.
11 Q. Okay.
12 MR. TACHNER: David, want to take a
13 break? It's about an hour-and-a-half.
14 MR. JANKOWSKI: Sure, we can take a
15 break.
16 MR. TACHNER: Whenever it's convenient.
17 MR. JANKOWSKI: No, this is fine. This
18 is a fine time.
19 (Recess taken from 2:25 p.m. to
20 2:51 p.m.)
21 BY MR. JANKOWSKI:
22 Q. Mr. Allred, I'm going to hand you a
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1 document the court reporter has marked as
2 Exhibit 129. This is a four-page document from
3 the United States Patent and Trademark Office
4 Patent Trial and Appeal Board associated with
5 Opposition No. 91201389.
6 (Exhibit No. 129 was marked for
7 identification.)
8 BY MR. JANKOWSKI:
9 Q. I'll just ask you do you recognize
10 Exhibit 129?
11 A. November 18, 2011, is when they mailed
12 it. Is this mailed to somebody? Is that how this
13 works?
14 Q. Well, my understanding is yes, that the
15 November 18, 2011, date is the date that the
16 Patent and Trademark Office mailed it.
17 A. Because you don't see any addresses on
18 here or anything. It's hard to tell if this was
19 something sent to me. It wouldn't be as it is.
20 There would have to be a cover letter or
21 something. I could look at it and see what it's
22 all about, if you'd like.
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1 Q. If you can look at it and see if you
2 recognize it.
3 A. You mean what it's about? It wouldn't
4 necessarily be something I've ever actually seen
5 even though I might know what it's about?
6 Q. Well, no, I think you may have seen it.
7 That's why I'm asking you if you recognize it.
8 A. How would I have received it, I guess, is
9 the thing. Would it be mailed to me? Would it be
10 like this with a cover sheet or something? My
11 address is not on here is what I'm not quite
12 understanding how -- in what form I would have
13 seen it.
14 Q. It's associated with, as you can see at
15 the top there, an opposition proceeding between
16 James R. Glidewell Dental Ceramics and Keating
17 Dental Arts?
18 A. Exactly. I might understand everything
19 this is about. I don't know how I would have
20 received it. I don't know if this come with a
21 cover letter, and I would have opened it up, and
22 this would have been attached, and I would have
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1 looked at this. I'm just asking if you knew.
2 Q. I don't know.
3 A. Okay. I know that "Moreover judicial
4 economy lies in the suspension of the board
5 proceeding because the board has limited
6 jurisdiction." I am guessing this has to do with
7 our opposition to the application for the mark
8 here, KDZ Bruxer. If that's the case, that's
9 something I remember we would have opposed that at
10 the earliest opportunity, and that's when it was
11 published in the Gazette.
12 Q. Do you monitor the Gazette to look for
13 marks you think may be a problem?
14 A. I do not.
15 Q. How is it you happened to notice Keating
16 Dental Arts mark as it appeared in the Gazette?
17 A. I didn't notice it in the Gazette.
18 Q. How did you --
19 A. Not initially.
20 Q. Okay.
21 A. You're right. It was me, and I guess it
22 was rather serendipitously I noticed that this was
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1 something that had been filed for. At the
2 earliest opportunity we had, we communicated with
3 the defendant through counsel that we would oppose
4 this mark because it was confusingly similar. He
5 didn't do anything about it. All we could do is
6 wait for it to be published in the Gazette.
7 Q. How did you learn about the pending
8 application?
9 A. Doing a trademark search on our own
10 trademark, anything that contained the word brux.
11 Q. When was that search conducted, do you
12 recall?
13 A. It would have been whenever it was we
14 sent a letter to KDA, Inc.'s attorney that we
15 would object to this mark. I don't know exactly
16 when the date of that letter was. It is at the
17 same time. Probably no more than days after I
18 would assume.
19 Q. And is running searches for marks that
20 use "brux," is that something you do periodically?
21 A. I don't really know why I was doing it.
22 I might have been looking for our own mark. I
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1 can't tell you why I was searching it.
2 Q. When you say "your own mark," you mean
3 the application for use on the milling blanks?
4 A. Possibly then. It would have been
5 looking for our mark and checking to see what
6 existed in Class 5. It could have been about that
7 time. I don't know. I'd have to look at the
8 dates.
9 Q. Have you filed any other oppositions to
10 trademark applications that Glidewell deems to be
11 confusingly similar to the BruxZir mark?
12 A. No.
13 Q. Let me hand you a document the court
14 reporter has marketed as Exhibit 130. It's a
15 letter of protest memorandum dated December 2,
16 2010. I'll show this to you.
17 (Exhibit No. 130 was marked for
18 identification.)
19 THE WITNESS: Are we done with this?
20 BY MR. JANKOWSKI:
21 Q. Yes, you can set that aside.
22 A. This is from Katherine Holman to Charles
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1 Joiner.
2 Q. I think it's from Mr. Joiner to
3 Ms. Holman. At least it looks that way.
4 A. There you go. To Holman from Joiner.
5 Q. This document makes reference to a
6 protester who has filed a letter of protest.
7 Do you see that?
8 A. I see the heading here, "Letter of
9 Protest." Is that what you mean?
10 Q. Right.
11 A. Should I be looking through this or
12 something?
13 Q. No, just look at -- in fact, now that I'm
14 looking at this, let me see your copy of that. I
15 really only want the front page of that. I don't
16 know why this is all attached. Sorry. A little
17 inelegant. That's the exhibit.
18 Oh, you know what? I take that back.
19 A. You do want that?
20 Q. Yeah, I want that. So just put that and
21 I'll give you that one back. Now I recognize why
22 it looks that way. Just keep them together and I
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1 will restaple them.
2 The rest of it looks different, but
3 actually it's printouts that are referenced in the
4 protest is what it is.
5 So, Mr. Allred, this is a letter of
6 protest associated with somebody saying that the
7 mark Brux XXX is merely descriptive of the
8 applicant's identified goods.
9 Do you see that?
10 A. I do see that written right here.
11 Q. Your understanding is Glidewell is not
12 the protester that's referenced here; correct?
13 A. Yeah, I know for sure it has nothing to
14 do with Glidewell Laboratories.
15 Q. If you do look at the pages inside,
16 you'll see what they are are printouts of
17 dictionary definitions, for example, of the word
18 brux, B-r-u-x, and bruxism.
19 Do you see that?
20 A. I see Free Dictionary. I see the word
21 "brux" on there. Right there in between Brutus
22 and something else.

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1 Q. Right.
2 A. I see a brux and then night guard,
3 bruxism, bruxism, brux.
4 Q. Are you familiar with the mark Brux XXX
5 in Exhibit 130?
6 A. No. I'm just curious as to what it even
7 was. Is it a mouth guard of some kind?
8 Q. Well, let's take a look. You can put
9 that at the bottom of your stack, and I'll get a
10 stapler for that.
11 A. Kind of like AAA Plumbing, huh?
12 Q. I'm going to hand you a series of
13 exhibits. These are numbered Exhibits 131 through
14 Exhibit 138. Let me just state, for the record,
15 Exhibit 131 is a registration from the trademark
16 office on the principal register for Bruxgard,
17 B-r-u-x-g-a-r-d.
18 Exhibit 132 is a registration on the
19 principal register for Brux-eze, B-r-u-x-e-z-e.
20 Exhibit 133 is a registration on the
21 principal register for the mark Bruxcare,
22 B-r-u-x-c-a-r-e.

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1 Exhibit 134 is a registration on the
2 principal register for Brux-eze, B-r-u-x-e-z-e.
3 Exhibit 135 is a registration for the
4 mark Dr. Brux, Dr. spelled D-r period.
5 Exhibit 136 is a registration for the
6 mark Brux-Checker, spelled B-r-u-x-C-h-e-c-k-e-r.
7 Exhibit 137 is a printout from the PTO
8 website associated with an application to register
9 the mark Bruxcure, spelled B-r-u-x-c-u-r-e.
10 And Exhibit 138 is a printout from the
11 trademark electronic search system associated with
12 an application for the mark Brux XXX spelled
13 B-r-u-x X-X-X.
14 I'll give you these exhibits and let you
15 look at them.
16 A. Okay.
17 (Exhibit Nos. 131 through 138 were
18 marked for identification.)
19 BY MR. JANKOWSKI:
20 Q. So the question is for you, Mr. Allred,
21 is in the searching that you're saying that you've
22 done, I guess that would be in connection with any

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1 of your trademark applications BruxZir, have you
2 encountered the marks that are shown here in
3 Exhibits 131 through Exhibit 138?
4 A. I probably did if it was something back
5 further than, what, June 2009. Some of these look
6 like they were after June, 2009. So obviously I
7 wouldn't have seen it then.
8 Q. But you were also doing searches later it
9 sounds like, for example, when you discovered
10 Keating Dental Arts pending application; is that
11 correct?
12 A. That's true. I didn't see anything in
13 Class 5 in there, but I could look through it
14 again.
15 Q. And right.
16 These particular examples of
17 registrations are from Class 10; correct?
18 A. Yeah, I noticed that.
19 Q. Right.
20 So one thing that's true is there are a
21 lot of marks associated with Class 10 that do use
22 the term "brux" in them. Would you agree?

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<p>1 A. I would agree, yes.</p> <p>2 Q. Do you think the names shown in</p> <p>3 Exhibits 131 to 138, are there any problems with</p> <p>4 them being confusingly similar with the BruxZir?</p> <p>5 A. Certainly not confused with a ceramic</p> <p>6 crown, no.</p> <p>7 Q. Why do you say they're not?</p> <p>8 A. A ceramic crown is something a dentist</p> <p>9 prepares a tooth for, and you get something that</p> <p>10 fits exactly and cements in place and a patient</p> <p>11 may have it for the next 40 years. It's all</p> <p>12 together different than anything on this page.</p> <p>13 Q. How about the names themselves?</p> <p>14 A. Well, the fact that it does start with</p> <p>15 b-r-u-x? Theoretically, I suppose, I can hire an</p> <p>16 attorney's firm and they can send out letters to</p> <p>17 all these people, but we don't do that.</p> <p>18 Q. When you say, "we don't do that," what do</p> <p>19 you mean?</p> <p>20 A. As a company, we're not really very</p> <p>21 litigious.</p> <p>22 Q. But you sent a letter to Mr. Keating?</p> <p style="text-align: right;">Page 174</p>	<p>1 made out of plastic. This may very well be</p> <p>2 something that's custom fit. I don't really know</p> <p>3 if it's prefabricated and supposed to fit</p> <p>4 everybody and anybody. I don't know. I have</p> <p>5 never really looked into it that close. I don't</p> <p>6 know if this would tell me if I did. I'm not</p> <p>7 familiar with their product.</p> <p>8 Q. Now, in the description, it says right on</p> <p>9 Exhibit 138 for treatment of bruxism.</p> <p>10 Do you see that?</p> <p>11 A. Are you talking about under "Goods and</p> <p>12 services"?</p> <p>13 Q. Yes.</p> <p>14 A. I see that.</p> <p>15 Q. That's not a surprise to you, correct,</p> <p>16 because you know from working in the dental</p> <p>17 industry that mouth guards is one of the products</p> <p>18 that will be used to try to treat people who have</p> <p>19 bruxism; correct?</p> <p>20 A. I think it's kind of confusing to use</p> <p>21 that language. I understand it if someone does.</p> <p>22 I think of a mouth guard as something that's</p> <p style="text-align: right;">Page 176</p>
<p>1 A. Of course.</p> <p>2 Q. Why do you say, of course?</p> <p>3 A. Because he was marketing purposefully, I</p> <p>4 think, a confusingly similar mark right on the</p> <p>5 coat tails of our product.</p> <p>6 Q. I think we were asking or the issue came</p> <p>7 up earlier about what Brux XXX was associated</p> <p>8 with. If you look on Exhibit 138, this answers</p> <p>9 the question as to what material -- excuse me,</p> <p>10 what the goods and services are associated with</p> <p>11 that application. Do you want to take a look and</p> <p>12 you can educate yourself on that.</p> <p>13 A. I see that.</p> <p>14 Q. What goods and services is the mark Brux</p> <p>15 XXX associated with?</p> <p>16 A. It looks like to me exactly what our</p> <p>17 comfort bite splints are. That is a mouth guard.</p> <p>18 It's for helping people who grind their teeth save</p> <p>19 their teeth. They could have expensive dental</p> <p>20 work that they don't want to destroy or afraid of</p> <p>21 the damage they might do to their own teeth.</p> <p>22 That's what a bite splint is for. It's generally</p> <p style="text-align: right;">Page 175</p>	<p>1 removable that a person wears in sports to protect</p> <p>2 their teeth in case they collide with another</p> <p>3 player, hit in the head with a hockey stick. I</p> <p>4 think of this more as a bite splint. It could</p> <p>5 be -- I guess that really is one of the marks we</p> <p>6 have too. I've never registered it. Maybe when</p> <p>7 you go on the USPTO site, it doesn't give more</p> <p>8 options than this. I'm not that familiar with it.</p> <p>9 I do think that is confusing because I</p> <p>10 think a lot of people think of a mouth guard as</p> <p>11 something you can even buy prefabricated and just</p> <p>12 for kids playing football. The bite splint we</p> <p>13 make, and I know we make thousands every week,</p> <p>14 they're custom fit for the particular patient and</p> <p>15 they're made of plastic and made according to a</p> <p>16 doctor's prescription, and they're made for a</p> <p>17 specific purpose and, of course, the doctor is the</p> <p>18 one prescribing it, but it's for a patient that</p> <p>19 apparently suffers from grinding and clenching.</p> <p>20 Q. It's a product for bruxers; correct?</p> <p>21 A. Absolutely.</p> <p>22 Q. And Exhibit 138 seems to be trying to</p> <p style="text-align: right;">Page 177</p>

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<p>1 register a name for a similar product for bruxers; 2 correct? 3 A. It looks like most of these were that, 4 yes. 5 Q. Actually, you're anticipating my 6 questions. 7 What's shown here in Exhibits 131 8 through 138 are examples of products all designed 9 for bruxers; wouldn't you agree? 10 A. Yes, absolutely. 11 Q. Exhibit 137, for example, is also 12 Bruxcure, and it also says under "Goods and 13 services," mouth guards for medical purposes. 14 Do you see that? 15 A. I do. There, again, I see the fact that 16 it says mouth guards, and I think ideally it would 17 say a bite splint or perhaps a mouth protection 18 device or something like that just to avoid 19 confusion. But I know what they're talking about. 20 Q. And the name in and of itself is telling 21 you something about the purpose for which the 22 product is being used?</p> <p style="text-align: right;">Page 178</p>	<p>1 Q. Also to treat bruxers; would you agree? 2 A. I'm guessing, like you say, from the name 3 Bruxgard, but I don't really know. It could be a 4 mouth guard. I assume they just have to do it 5 that way. It must be the only option they have 6 under the way the registration system works here. 7 I'm just guessing at that. 8 Q. So you don't recall seeing these 9 registrations before? You think you may have, 10 you're not sure? 11 A. I'm pretty sure I would have if any of 12 these were prior to June of 2009. Yeah, 2009, 13 June. If they were around the time that I would 14 have looked again when we were filing a trademark 15 for the blank, I might have seen them. I don't 16 know if I did or not, but I wouldn't have been 17 alarmed about it because of the fact of our prior 18 registration being in a different class all 19 together and being so related to what it was our 20 business was. I should check this out, though. 21 It's on my birthday of this year. 22 Q. Now, earlier you said that Glidewell's</p> <p style="text-align: right;">Page 180</p>
<p>1 A. That's really all I have to go by. For 2 instance, this would be very similar for how our 3 goods would be described for the Playsafe mouth 4 guard, but it has nothing to do with bruxism. 5 Q. And you don't have brux in the name of 6 that product; right? 7 A. Not at all. 8 Q. But you do have brux in the name of the 9 BruxZir product, the full contour zirconia crown 10 as it's registered; correct? 11 A. That is correct. 12 Q. And that is a product that was developed 13 for bruxers; correct? 14 A. It really was not developed for bruxers. 15 Q. Well, Glidewell's marketing materials say 16 it's ideal for bruxers; correct? 17 A. I think that's good marketing. 18 Q. Exhibit 131, the first one on here, 19 Bruxgard, spelled B-r-u-x-g-a-r-d, is also for 20 dental mouth guards for medical purposes. 21 Do you see that? 22 A. I do.</p> <p style="text-align: right;">Page 179</p>	<p>1 not a litigious company; correct? 2 A. That's correct. 3 Q. It sounds like an exception was made for 4 what's going on here with Keating Dental Arts; is 5 that correct? 6 A. Not exactly. Any company that did what 7 Keating Dental Arts had done we would have 8 followed the same course. 9 Q. Okay. And have you followed the same 10 course with other companies? 11 A. There's no other company that's done 12 that. But we would if any other company had. 13 Q. So the only trademark infringement 14 lawsuit that Glidewell's filed has been against 15 Keating Dental Arts; is that correct? 16 A. That's correct. 17 Q. And you made the comment that Keating 18 Dental Arts purposefully was infringing 19 Glidewell's mark; correct? 20 A. That's correct. 21 Q. Why do you say "purposefully"? 22 A. Well, I know that he would have been</p> <p style="text-align: right;">Page 181</p>

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<p>1 aware of our use of the mark and that he would</p> <p>2 have copied it in what he did just as others have</p> <p>3 copied it.</p> <p>4 Q. Why do you say he copied it?</p> <p>5 A. It's pretty obvious. It's very</p> <p>6 confusingly similar to exactly what our mark is.</p> <p>7 Q. First of all, what's your understanding</p> <p>8 of what Keating Dental Arts mark is that's at</p> <p>9 issue in this lawsuit?</p> <p>10 A. The fact he's using a word that's</p> <p>11 confusingly similar to our mark and marketing the</p> <p>12 goods in the same class to the same people.</p> <p>13 Q. What goods is he marketing?</p> <p>14 A. Full contour zirconia crowns.</p> <p>15 Q. And what's he calling them?</p> <p>16 A. He calls them KDZ Bruxer.</p> <p>17 Q. So why is KDZ Bruxer confusingly similar</p> <p>18 to Glidewell's mark?</p> <p>19 A. Because it looks and sounds very similar.</p> <p>20 Q. And why do you say it looks similar?</p> <p>21 A. Easily confused and I think we have</p> <p>22 examples of that.</p> <p style="text-align: right;">Page 182</p>	<p>1 A. I see that.</p> <p>2 Q. I also see midway through the page</p> <p>3 they're introducing the all-new KDZ Bruxer written</p> <p>4 out in two words, KDZ space B-r-u-x-e-r.</p> <p>5 Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. And it's characterized as full contour</p> <p>8 zirconia solution available exclusively from</p> <p>9 Keating Dental Arts.</p> <p>10 Do you see that?</p> <p>11 A. I do see that.</p> <p>12 Q. What is it about this presentation, for</p> <p>13 example, Exhibit 139 that is, you believe,</p> <p>14 confusingly similar to Glidewell's mark BruxZir</p> <p>15 shown in Exhibit 122 spelled B-r-u-x-Z-i-r?</p> <p>16 A. Obviously because four times on the page</p> <p>17 he went out of his way to emphasize B-r-u-x.</p> <p>18 Q. Why do you say he's emphasizing B-r-u-x?</p> <p>19 A. It says, "All new KDZ Bruxer," "The</p> <p>20 all-new KDZ Bruxer." Before that, it's</p> <p>21 "Exclusively from Keating Dental Arts," not KDZ</p> <p>22 arts. And you come down here, and it says "The</p> <p style="text-align: right;">Page 184</p>
<p>1 Q. Why is it obvious to you?</p> <p>2 A. When I look at it, it looks very similar.</p> <p>3 Q. All right.</p> <p>4 MR. JANKOWSKI: Let's have the court</p> <p>5 reporter mark as Exhibit 139.</p> <p>6 (Exhibit No. 139 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. JANKOWSKI:</p> <p>9 Q. Exhibit 139 is a copy of Exhibit B to the</p> <p>10 complaint in this action.</p> <p>11 Mr. Allred, do you recognize Exhibit 139?</p> <p>12 A. I recognize it.</p> <p>13 Q. And because it's attached to the</p> <p>14 complaint as Exhibit B, I assume this is an</p> <p>15 example of the use of Keating Dental Arts' mark</p> <p>16 that Glidewell is concerned about being</p> <p>17 confusingly similar; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And in this document, I see the KDZ</p> <p>20 Bruxer, the stylized logo at the bottom of the</p> <p>21 page with the TM next to it.</p> <p>22 Do you see that?</p> <p style="text-align: right;">Page 183</p>	<p>1 KDZ Bruxer" and down there, a stylized logo, KDZ</p> <p>2 Bruxer. There's not a thing on that page that has</p> <p>3 anything to do with bruxism other than in his</p> <p>4 mark. So I think it's obviously purposefully</p> <p>5 aimed at riding on the coat tail of our mark. We</p> <p>6 saw it before. We just never had anyone so</p> <p>7 blatantly and just continue to do it. That's why</p> <p>8 we had to file a case in U.S. District Court.</p> <p>9 MR. JANKOWSKI: Let me make another</p> <p>10 exhibit here. Let me mark as 140 a one-page</p> <p>11 document which is a letter from Leonard Tachner to</p> <p>12 Thomas Gourde, dated May 31, 2011. I believe it's</p> <p>13 attached as Exhibit C to the complaint.</p> <p>14 (Exhibit No. 140 was marked for</p> <p>15 identification.)</p> <p>16 THE WITNESS: Am I done with this?</p> <p>17 MR. JANKOWSKI: You can set it down if</p> <p>18 you'd like, but we're not done with that. I just</p> <p>19 want to set the time frame here that we're talking</p> <p>20 about.</p> <p>21 THE WITNESS: Okay.</p> <p>22 ///</p> <p style="text-align: right;">Page 185</p>

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<p>1 BY MR. JANKOWSKI:</p> <p>2 Q. You mentioned earlier that Glidewell sent</p> <p>3 a letter to Keating Dental Arts associated with</p> <p>4 this. Is this the letter you're referring to</p> <p>5 marked as Exhibit 140?</p> <p>6 A. I think it is because this looks well</p> <p>7 before even our opposition to the mark before the</p> <p>8 Patent and Trademark Office.</p> <p>9 Q. And in this letter, Glidewell is</p> <p>10 providing its position to Keating Dental Arts</p> <p>11 about the confusingly similar appearance that</p> <p>12 you're testifying about today; correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And so the time frame we're talking about</p> <p>15 is May, 2011; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it's about that time that you</p> <p>18 discovered that Keating Dental Arts was using KDZ</p> <p>19 Bruxer, spelled B-r-u-x-e-r, as a mark; correct?</p> <p>20 A. No, I think this is probably within days</p> <p>21 of discovering that he had filed for a trademark.</p> <p>22 Q. When did you first discover or is there</p> <p style="text-align: right;">Page 186</p>	<p>1 Q. Right.</p> <p>2 So both Exhibit 29 and Exhibit 140 are</p> <p>3 letters that Glidewell sent to Keating Dental Arts</p> <p>4 basically expressing its position that Keating's</p> <p>5 mark is confusingly similar to the registered</p> <p>6 mark. Is that fair?</p> <p>7 A. That's fair.</p> <p>8 Q. Now, at that time in 2011, all-zirconia</p> <p>9 crowns were being used predominantly for bruxers;</p> <p>10 correct?</p> <p>11 A. That wouldn't be true.</p> <p>12 Q. Why do you say that wouldn't be true?</p> <p>13 A. It's just a fact.</p> <p>14 Q. What do you base that understanding on?</p> <p>15 A. Based on the fact that doctors prescribed</p> <p>16 crowns they thought were what they wanted to use</p> <p>17 for a patient. A patient wasn't necessarily a</p> <p>18 bruxer.</p> <p>19 Q. But you were well aware that the BruxZir</p> <p>20 product when it was released in 2009 was</p> <p>21 considered a crown that was not very esthetically</p> <p>22 pleasing; correct?</p> <p style="text-align: right;">Page 188</p>
<p>1 an earlier letter you're thinking about?</p> <p>2 A. If this is the first letter, then this is</p> <p>3 probably days after I first learned that he had</p> <p>4 filed for a confusingly similar mark before the</p> <p>5 Patent and Trademark Office and was subsequently</p> <p>6 educated that we couldn't do anything about it</p> <p>7 until it was published in the Gazette. So I know</p> <p>8 we wouldn't have done anything more than something</p> <p>9 like this prior to our formal opposition when it</p> <p>10 was published in the Gazette.</p> <p>11 Q. Let me provide you with another document.</p> <p>12 This was previously marked as Exhibit 29.</p> <p>13 A. Okay.</p> <p>14 Q. This is a letter dated August 9, 2011,</p> <p>15 from Robin Bartolo to Shaun, spelled S-h-a-u-n.</p> <p>16 So Exhibit 29 is also a letter sent from</p> <p>17 Glidewell to Keating Dental. Is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. It's also associated with the BruxZir</p> <p>20 mark that Glidewell has; correct?</p> <p>21 A. That's written right in here. BruxZir</p> <p>22 coloring liquid and BruxZir instruction manual.</p> <p style="text-align: right;">Page 187</p>	<p>1 A. That's not correct. The crowns we sold</p> <p>2 were esthetically pleasing as anything you could</p> <p>3 get at that time because what you'd compare it to,</p> <p>4 a solid gold crown and our crowns would be</p> <p>5 considerably more esthetically pleasing more than</p> <p>6 a gold crown at least to most people that ended up</p> <p>7 going with this option. Doctors would have</p> <p>8 educated patients on their options, and we know</p> <p>9 just from our business experience that a lot of</p> <p>10 patients don't want gold crowns in their mouth.</p> <p>11 So they would prefer this over a gold crown.</p> <p>12 Q. But the patients that you're talking</p> <p>13 about who are having to decide between, for</p> <p>14 example, gold and full contour zirconia are</p> <p>15 patients who can't have the more esthetic crowns</p> <p>16 such as crowns with porcelain on top; correct?</p> <p>17 A. That's not correct. That's probably --</p> <p>18 more crowns today are prescribed for patients that</p> <p>19 probably have bruxism that are PFMs than anything</p> <p>20 else. Certainly not that many gold crowns which</p> <p>21 would be the optimal solution for a patient that</p> <p>22 had bruxism.</p> <p style="text-align: right;">Page 189</p>

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<p>1 Q. Okay. That's a good example. So PFMs</p> <p>2 are crowns that are more esthetically pleasing</p> <p>3 than a full contour zirconia crown; correct?</p> <p>4 A. It's kind of hard to say because PFM</p> <p>5 means porcelain fused to metal, and there is such</p> <p>6 a thing as porcelain fused to zirconia, and I</p> <p>7 don't know that porcelain fused to metal is more</p> <p>8 attractive than porcelain fused to zirconia. I</p> <p>9 guess I should argue it's not.</p> <p>10 Q. First of all, I want to go back to this</p> <p>11 time frame, back to 2009 to -- mid 2009 to mid</p> <p>12 2011 time frame. Okay?</p> <p>13 A. Okay.</p> <p>14 Q. At that time frame, the full contour</p> <p>15 zirconia crown was considered something that</p> <p>16 wasn't that esthetically pleasing. It was not</p> <p>17 being promoted by Glidewell for heavy use in the</p> <p>18 anterior region. It was promoted for use in the</p> <p>19 posterior part of the mouth because it was not as</p> <p>20 esthetic as other crowns that are available;</p> <p>21 correct?</p> <p>22 A. We definitely did not promote it as an</p> <p style="text-align: right;">Page 190</p>	<p>1 then purchasers don't like it, but there's not a</p> <p>2 whole lot you can do about it unless you sent the</p> <p>3 work back to the doctor who prepared the teeth,</p> <p>4 and you wouldn't do that because he's already</p> <p>5 given you what he wants you to build a crown on.</p> <p>6 So as an option, you could use a full contour</p> <p>7 zirconia crown because there you have only the</p> <p>8 thickness of the ceramic, and there is no metal</p> <p>9 underlying it, and at the same time, it arguably</p> <p>10 will last as long as gold. So you could call it a</p> <p>11 gold substitute in a lot of situations where</p> <p>12 ordinarily you can only use gold.</p> <p>13 Q. In fact, I've heard testimony --</p> <p>14 A. I say gold. I should say metal. In</p> <p>15 other words, you could have a metal crown that was</p> <p>16 made out of chrome cobalt. It's just that you</p> <p>17 know what that would look like. It would look</p> <p>18 like your car bumper.</p> <p>19 Q. Mr. Friebauer testified yesterday the</p> <p>20 development of the BruxZir crown was an attempt to</p> <p>21 give Dr. DiTolla a more tooth-looking gold crown</p> <p>22 which is what he had always wanted. Are you</p> <p style="text-align: right;">Page 192</p>
<p>1 anterior crown and bridge system at the time and</p> <p>2 still do have better options for that since that</p> <p>3 region doesn't have the same type of forces</p> <p>4 irrespective of whether a person is a bruxer or</p> <p>5 not, and even bruxers don't necessarily destroy an</p> <p>6 anterior crown. I'm not an expert on that. I'm</p> <p>7 not a dentist. Generally, veneers -- I haven't</p> <p>8 heard them contraindicated for bruxers, and</p> <p>9 they're generally made of the weakest material</p> <p>10 there is, and that strictly is the glass.</p> <p>11 Q. Again, at this time, 2009 to mid 2011</p> <p>12 time frame, full zirconia crowns would have been</p> <p>13 promoted by Glidewell and others as an alternative</p> <p>14 to gold for their bruxer patients. Isn't that</p> <p>15 true?</p> <p>16 A. As an alternative to gold. Gold is a</p> <p>17 premium restoration and dental technicians think</p> <p>18 that it's the best whether or not they themselves</p> <p>19 are bruxers. The thing about gold is that it's</p> <p>20 only the thickness of the metal. It has a lot</p> <p>21 more applicability than something that's going to</p> <p>22 have a metal and then a ceramic over it. Even</p> <p style="text-align: right;">Page 191</p>	<p>1 familiar with that?</p> <p>2 A. That's probably a way of saying it. I</p> <p>3 think, in my own mind if I heard that, and I would</p> <p>4 think of maybe the idea behind what those words</p> <p>5 would be is more in the way of -- I wouldn't say</p> <p>6 it was a joke. I don't know -- maybe I'll think</p> <p>7 of the right word for it, but it would be more if</p> <p>8 you would ask a doctor, "How would you like a</p> <p>9 white-colored gold crown," and, of course, that</p> <p>10 would be a joke because "Oh, yeah, sure, do you</p> <p>11 got it?" Of course, you don't because there's no</p> <p>12 such thing as a white-colored gold crown.</p> <p>13 That would be similar to whatever</p> <p>14 language -- I don't know exactly what you just</p> <p>15 said. That just kind of reminded me of something</p> <p>16 that could be said to a doctor if you were giving</p> <p>17 him an option of a gold crown for this patient, or</p> <p>18 how many doctors here would like a tooth-colored</p> <p>19 gold crown? And then I'm sure doctors would maybe</p> <p>20 go to raise their hand but wouldn't bother</p> <p>21 because, yeah, sure, that doesn't exist. But then</p> <p>22 the idea is, "Oh, well, maybe it does." "Here's</p> <p style="text-align: right;">Page 193</p>

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<p>1 an all ceramic that could be a replacement for</p> <p>2 your next prescription for a gold crown."</p> <p>3 Q. And the truth of the matter is Glidewell</p> <p>4 is absolutely trying to make the all-zirconia</p> <p>5 crowns look as much like a tooth as they can?</p> <p>6 A. Of course.</p> <p>7 Q. And as you said, zirconia, one aspect of</p> <p>8 it, is in terms of function, it is a lot more like</p> <p>9 gold than any of the earlier solutions that were</p> <p>10 more aesthetic. Is that fair?</p> <p>11 A. I don't really -- it may be what you're</p> <p>12 thinking, and I would agree with that. But what</p> <p>13 you're saying, I couldn't agree with it. I don't</p> <p>14 know what you mean by "much more like gold." It's</p> <p>15 obviously not metal.</p> <p>16 Q. More like gold meaning you can use it in</p> <p>17 applications such as for bruxers where you would</p> <p>18 use gold. You can substitute the full contour</p> <p>19 zirconia.</p> <p>20 A. I wouldn't actually agree to that. You</p> <p>21 can use a gold crown for anybody. I have a gold</p> <p>22 crown, and I'm not a bruxer.</p> <p style="text-align: right;">Page 194</p>	<p>1 15,000, say, BruxZirs a week. How many you think</p> <p>2 a dentist does a week? Maybe two a month. The</p> <p>3 labs see hundreds of thousands of models of</p> <p>4 patients. They have a different appreciation for</p> <p>5 something that's going to last and its properties</p> <p>6 than even dentists. So that's where a dental lab</p> <p>7 would think a gold crown is the optimum</p> <p>8 restoration just like the mummy, the Pharaoh. I</p> <p>9 mean that's not the way a dentist necessarily</p> <p>10 thinks. Maybe they think whatever the patients</p> <p>11 like.</p> <p>12 I assume there's a two-way communication,</p> <p>13 and they're giving the patient the options and</p> <p>14 there's some kind of informed consent, and they're</p> <p>15 giving the patient what he wants. Apparently most</p> <p>16 patients don't like gold, and it's been that way</p> <p>17 for a long time. When it comes to porcelain fused</p> <p>18 to metal crown, gold is arguably, I would agree, a</p> <p>19 superior coping material, but that's probably the</p> <p>20 fewest of all the PFMs is going to be with the</p> <p>21 precious metal coping. Most of them will be with</p> <p>22 a nonprecious metal coping or maybe a semiprecious</p> <p style="text-align: right;">Page 196</p>
<p>1 Q. I'm not saying I'm limiting it to</p> <p>2 bruxers. I'm saying any application you can use</p> <p>3 gold for, you can use the full contour zirconia</p> <p>4 crown as well and be more aesthetic than the gold.</p> <p>5 A. That's true. You can say the same thing</p> <p>6 for PFM.</p> <p>7 Q. I don't think you can, though; right?</p> <p>8 There are bruxer patients that will destroy the</p> <p>9 PFMs that won't destroy the gold; correct?</p> <p>10 A. That's not correct. A bruxer patient</p> <p>11 will destroy anything, even destroy their car</p> <p>12 bumper crown. They'll chew through anything.</p> <p>13 They destroy their own dentation. They lose all</p> <p>14 their teeth. They destroy their jaws. They need</p> <p>15 TMJ. They need to have their whole faces rebuilt.</p> <p>16 Q. But the gold and zirconia solutions are</p> <p>17 an optimal solution and a better solution for</p> <p>18 grinders; correct?</p> <p>19 A. Maybe to a dental lab. You'd be</p> <p>20 surprised how few doctors actually work with gold.</p> <p>21 Q. I'm not following what you're saying.</p> <p>22 A. Dental labs, they know. They see. We do</p> <p style="text-align: right;">Page 195</p>	<p>1 metal coping. Nonprecious would be the strongest,</p> <p>2 and it could be the thinnest; so that would be an</p> <p>3 option that probably doctors would consider and</p> <p>4 suggest to a patient. Porcelain fused to</p> <p>5 nonprecious metal, and that's what they've been</p> <p>6 doing for years and years and years, and that's</p> <p>7 what they're doing now.</p> <p>8 Q. Prior to Glidewell coming out with a</p> <p>9 BruxZir crown, gold was considered the best</p> <p>10 solution for bruxers for crowns in the back;</p> <p>11 correct?</p> <p>12 A. I'm just talking between you and me as a</p> <p>13 person that works for a lab and has an</p> <p>14 understanding of things that might be idealic.</p> <p>15 That's all. There's very few gold crowns</p> <p>16 prescribed compared to all crowns prescribed in</p> <p>17 the United States. A very small number.</p> <p>18 Q. You don't have an understanding as to</p> <p>19 whether dentists in 2009 or 2010 would have been</p> <p>20 prescribing gold crowns for their bruxer patients?</p> <p>21 A. Some would but only doctors who prescribe</p> <p>22 gold crowns. Not that many do.</p> <p style="text-align: right;">Page 197</p>

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<p>1 Q. Why do you say not that many do it?</p> <p>2 A. It's just the numbers. I don't know why</p> <p>3 they do or don't.</p> <p>4 Q. Are you aware that Dr. DiTolla has</p> <p>5 testified he thinks gold is the best solution for</p> <p>6 bruxers?</p> <p>7 A. Sure.</p> <p>8 Q. At the time Keating Dental Arts was</p> <p>9 marketing its new KDZ Bruxer crown at that time,</p> <p>10 gold would have been a popular choice as a crown</p> <p>11 for bruxers; correct?</p> <p>12 A. It's not in our numbers.</p> <p>13 Q. I'm just asking about what dentists</p> <p>14 prefer in terms of materials used in crowns.</p> <p>15 A. We would only know by what they</p> <p>16 prescribe.</p> <p>17 Q. How do you know what dentists are</p> <p>18 prescribing?</p> <p>19 A. Because we get their prescription and we</p> <p>20 fill the order. That's our business.</p> <p>21 Q. And how do you know if it's for bruxer</p> <p>22 patients?</p> <p style="text-align: right;">Page 198</p>	<p>1 before KDA Dental Arts. The same thing goes for</p> <p>2 everyone, not just KDA Dental Arts, and before</p> <p>3 that, many labs were using porcelain fused to</p> <p>4 zirconia crowns and that goes back even further.</p> <p>5 Q. Are you aware that Mr. Keating testified</p> <p>6 that he came out with this product to meet the</p> <p>7 requests of his dentists who wanted a stronger</p> <p>8 crown that wasn't gold for his bruxer patients?</p> <p>9 A. I'm not aware of his testimony. I know</p> <p>10 he did have his deposition taken, but I have no</p> <p>11 idea what he said.</p> <p>12 Q. Does that surprise you to hear that?</p> <p>13 A. It doesn't surprise me that someone would</p> <p>14 say that.</p> <p>15 Q. Why do you characterize it that way?</p> <p>16 A. It just makes sense that someone would</p> <p>17 say something like that. It sounds like our</p> <p>18 marketing.</p> <p>19 Q. Because he's marketing this product to</p> <p>20 dentists to use with their bruxer patients;</p> <p>21 correct?</p> <p>22 A. I don't see him mentioning bruxer</p> <p style="text-align: right;">Page 200</p>
<p>1 A. We don't know.</p> <p>2 Q. Well, then you don't know whether</p> <p>3 dentists at the time that Keating Dental Arts was</p> <p>4 marketing its new product in May, 2011, whether</p> <p>5 dentists were choosing gold as the preference of</p> <p>6 choice for their bruxer patients; is that correct?</p> <p>7 A. That's not what I'm saying. What I'm</p> <p>8 saying is our numbers show that very few doctors</p> <p>9 prescribe gold crowns. That's all I'm saying.</p> <p>10 Q. What I'd like you to do is answer my</p> <p>11 question which is at the time that Keating Dental</p> <p>12 Arts was coming out with the KDZ Bruxer, at that</p> <p>13 time, gold was a popular choice as a material to</p> <p>14 use for bruxer patients who had destroyed other</p> <p>15 crowns?</p> <p>16 A. Not based on our numbers. Our numbers</p> <p>17 show that it is prescribed very infrequently.</p> <p>18 Period.</p> <p>19 Q. So your answer is no to that?</p> <p>20 A. On many levels. He came out with his --</p> <p>21 you mean he came out with his full contour</p> <p>22 zirconia crown. Other labs were selling those</p> <p style="text-align: right;">Page 199</p>	<p>1 patients in there at all.</p> <p>2 Q. Well, I see the word "bruxer."</p> <p>3 A. Only in his mark. It's not in there</p> <p>4 anyplace else.</p> <p>5 Q. If I'm a dentist, and I see the word</p> <p>6 "bruxer," isn't that going to tell me this is for</p> <p>7 bruxer patients?</p> <p>8 A. You mean it might suggest to a dentist</p> <p>9 that if the word "bruxer" is in there, it must be</p> <p>10 strong enough to even hold up to a bruxing patient</p> <p>11 and thereby be a ceramic that is very durable?</p> <p>12 You mean that? Is that what you're saying?</p> <p>13 Q. No.</p> <p>14 A. Oh, I don't know what you're saying then.</p> <p>15 Q. I'm saying I'm a dentist reading this ad,</p> <p>16 Exhibit 139. I see the word "bruxer" in it.</p> <p>17 A. Okay.</p> <p>18 Q. I'm going to think of a patient suffering</p> <p>19 from bruxism; correct?</p> <p>20 A. I'm going to think probably a lot of</p> <p>21 dentists looked at this and thought of what we've</p> <p>22 been advertising for all of the time before this.</p> <p style="text-align: right;">Page 201</p>

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<p>1 A full contour zirconia crown. And I'm thinking</p> <p>2 what went through their minds is what I just</p> <p>3 described to you.</p> <p>4 Q. So I'm a dentist and I went to dental</p> <p>5 school. I learned about bruxism. I learned about</p> <p>6 bruxers. I've known about it for decades. Now I</p> <p>7 read this, and I'm going to think that Mr. Keating</p> <p>8 is misspelling Glidewell's trademark? Is that</p> <p>9 what you're saying?</p> <p>10 A. I think that he probably is trying to</p> <p>11 ride on the coat tails of a company that spent a</p> <p>12 lot of money advertising a crown that is</p> <p>13 confusingly similar to ours. So I think they</p> <p>14 probably would be thinking that they would be</p> <p>15 getting material -- a crown made from a material</p> <p>16 exactly as ours would be.</p> <p>17 Q. Well, right in the middle of Exhibit 139</p> <p>18 it says, "Exclusively from Keating Dental Arts."</p> <p>19 A. Exactly.</p> <p>20 Q. Well, if he's confusingly similar to your</p> <p>21 crown, why is he saying that?</p> <p>22 A. I would think that probably that has to</p> <p style="text-align: right;">Page 202</p>	<p>1 same thing?</p> <p>2 A. Trying to ride on the coattails of all</p> <p>3 the advertising that Glidewell Laboratories has</p> <p>4 done in introducing it's full contour zirconia</p> <p>5 crowns.</p> <p>6 Q. And when you say, "ride the coat tails,"</p> <p>7 what does that mean?</p> <p>8 A. Well, we put a lot of money into</p> <p>9 advertising that mark, and it's got a favorable</p> <p>10 review by a lot of dentists, and when doctors see</p> <p>11 something like that, they can confuse that with</p> <p>12 ours because it looks very similar.</p> <p>13 Q. Because of the word bruxer?</p> <p>14 A. Especially the b-r-u-x.</p> <p>15 Q. What about the e-r on the end of b-r-u-x?</p> <p>16 A. That would be confusing too.</p> <p>17 Q. What about the KDZ part? That part</p> <p>18 confusing?</p> <p>19 A. Definitely the Z. Sounds like the</p> <p>20 zirconia they probably heard about.</p> <p>21 Q. It makes sense to have a Z for zirconia</p> <p>22 because this is Keating Dental Arts full contour</p> <p style="text-align: right;">Page 204</p>
<p>1 do with the fact that it's all new. All new.</p> <p>2 Something like maybe he's making his own material.</p> <p>3 I don't know. Do you think? Is that what it</p> <p>4 would be? I don't know.</p> <p>5 Q. That's my question for you. What is it</p> <p>6 that you think -- what connection between Keating</p> <p>7 Dental Arts and Glidewell are you thinking is</p> <p>8 going to be in the minds of dentists when they see</p> <p>9 Exhibit 139?</p> <p>10 A. I'm thinking they see that and it's</p> <p>11 something they heard of before because they've</p> <p>12 been advertised to and they've maybe seen reviews</p> <p>13 about it in dental magazines and so they think</p> <p>14 this is the product that they heard about, others</p> <p>15 talking about, maybe other dentists that have used</p> <p>16 it and liked it. Maybe they saw something at one</p> <p>17 of the dental shows they went to for CEU education</p> <p>18 talking about something that Glidewell</p> <p>19 Laboratories came out, and I'm pretty sure that's</p> <p>20 exactly what he's trying to do because we know</p> <p>21 others have tried to do the same thing.</p> <p>22 Q. When you say "the same thing," what's the</p> <p style="text-align: right;">Page 203</p>	<p>1 zirconia crown; correct?</p> <p>2 A. It doesn't seem to me that way. It seems</p> <p>3 like it would be more like KDA Bruxer, not KDZ</p> <p>4 Bruxer.</p> <p>5 Q. You're aware that Keating Dental Arts has</p> <p>6 other zirconia products that are called KDZ;</p> <p>7 correct?</p> <p>8 A. I think that just happened right about</p> <p>9 the time he started doing this. I don't know of</p> <p>10 that ever happening before that.</p> <p>11 Q. Well, he had a product called KDZ that</p> <p>12 was a zirconia product that used KDZ and that was</p> <p>13 before the KDZ Bruxer, spelled B-r-u-x-e-r, came</p> <p>14 out. Are you aware of that?</p> <p>15 A. I'm not.</p> <p>16 Q. In fact, he was selling it as far back as</p> <p>17 2006. Are you aware of that?</p> <p>18 A. I'm not.</p> <p>19 Q. So the KDZ by itself is not confusingly</p> <p>20 similar with Glidewell; do you agree?</p> <p>21 A. The KDZ has nothing to do with Glidewell</p> <p>22 anymore than any of the other authorized dental</p> <p style="text-align: right;">Page 205</p>

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<p>1 labs that actually sell the BruxZir product. It</p> <p>2 could be a name of any dental laboratory.</p> <p>3 Q. And, in fact, I mean when I see KDZ here,</p> <p>4 it looks to me like Keating Dental Zirconia.</p> <p>5 Would you agree?</p> <p>6 A. I guess in hindsight you can make it say</p> <p>7 anything you want. To me, it's kind of funny that</p> <p>8 it says that when I've actually seen on his --</p> <p>9 some of his information he does use KDA for his</p> <p>10 product.</p> <p>11 Q. Okay. And KDA is an acronym for Keating</p> <p>12 Dental Arts; correct?</p> <p>13 A. That makes more sense to me because we</p> <p>14 don't have authorized dental labs, and say the</p> <p>15 name is Keller, and then they all of a sudden they</p> <p>16 change the two Ls to Zs. They'd say Keller and</p> <p>17 then they have our brand name. They don't change</p> <p>18 their name to Keller spelled with two Zs instead</p> <p>19 of two Ls and then put bruxer after it. It seems</p> <p>20 like that's what he's done here. Instead of KDA,</p> <p>21 it's KDZ.</p> <p>22 Q. So even the KDZ aside from the Bruxer you</p> <p style="text-align: right;">Page 206</p>	<p>1 A. You provided them to us.</p> <p>2 MR. TACHNER: There were redacted forms</p> <p>3 used in my opposition to your motion to amend the</p> <p>4 answer.</p> <p>5 MR. JANKOWSKI: They were redacted in --</p> <p>6 I'm sorry. They were submitted -- they were filed</p> <p>7 with the court?</p> <p>8 MR. TACHNER: Yes.</p> <p>9 MR. JANKOWSKI: In connection with which</p> <p>10 motion?</p> <p>11 MR. TACHNER: You filed a motion to amend</p> <p>12 your answer. We filed an opposition. In that</p> <p>13 opposition, two redacted forms that the witness is</p> <p>14 referring to were included, and a copy of that</p> <p>15 opposition was sent to the client including the</p> <p>16 witness. Now, that's exactly the way the</p> <p>17 confidentiality agreement says we can show the</p> <p>18 court material that you've marked attorneys eyes</p> <p>19 only, which is to redact the material that caused</p> <p>20 it to be so marked. We redacted the name of the</p> <p>21 doctor and the name of the patient.</p> <p>22 MR. JANKOWSKI: Okay. I just don't</p> <p style="text-align: right;">Page 208</p>
<p>1 think is suggestive of Glidewell Laboratories?</p> <p>2 A. I think it could be. If someone</p> <p>3 remembers the B-r-u-x and the fact it had a Z in</p> <p>4 it, and they see KDZ Bruxer, I think that can be</p> <p>5 confusing. In fact, we know there were persons</p> <p>6 who were confused about the fact they thought he</p> <p>7 was actually selling our product.</p> <p>8 Q. What are you referring to? What people?</p> <p>9 A. Persons that prescribed our crown on his</p> <p>10 Rx's and used our brand name.</p> <p>11 Q. How do you know what's been prescribed on</p> <p>12 his forms?</p> <p>13 A. They wrote it down in the prescription</p> <p>14 blank. They wrote our brand name on their</p> <p>15 prescription form.</p> <p>16 Q. Now, have you seen this?</p> <p>17 A. I have.</p> <p>18 Q. And when did you see this?</p> <p>19 A. Fairly recently. In the last three</p> <p>20 months, I'd say.</p> <p>21 Q. And how did you get those prescription</p> <p>22 forms?</p> <p style="text-align: right;">Page 207</p>	<p>1 recall the filing itself or even seeing the</p> <p>2 filing.</p> <p>3 MR. TACHNER: You'll have to check it</p> <p>4 out.</p> <p>5 MR. JANKOWSKI: It wasn't in connection</p> <p>6 with the partial summary judgment motion?</p> <p>7 MR. TACHNER: No.</p> <p>8 MR. JANKOWSKI: So this is the recent</p> <p>9 motion?</p> <p>10 MR. TACHNER: This is your motion.</p> <p>11 MR. JANKOWSKI: Okay.</p> <p>12 BY MR. JANKOWSKI:</p> <p>13 Q. So aside from what you might have seen in</p> <p>14 the last three months and, again, going back to</p> <p>15 the time frame May, 2011, when Exhibit 140 was</p> <p>16 sent to Keating Dental Arts, you hadn't seen any</p> <p>17 prescription forms of Keating Dental Arts at that</p> <p>18 time; correct?</p> <p>19 A. You're talking about now No. 140?</p> <p>20 Q. Yes. Going back to the time frame of</p> <p>21 Exhibit 140.</p> <p>22 A. Okay. At this time, I don't believe that</p> <p style="text-align: right;">Page 209</p>

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<p>1 he was using this mark in commerce. I have no</p> <p>2 knowledge of it if he was. This was the first</p> <p>3 time, days before this date I'm pretty sure, that</p> <p>4 I first became aware of his application for the</p> <p>5 mark, and that's really all I know at that time is</p> <p>6 that he had applied for the mark. I'm not aware</p> <p>7 of the fact he was actually using it in commerce</p> <p>8 anyway.</p> <p>9 Q. I'll represent for you that Keating</p> <p>10 Dental Arts has provided information in the case</p> <p>11 that shows that the KDZ Bruxer was associated with</p> <p>12 a full zirconia crown and that name was being used</p> <p>13 at least as early as May, 2011, and perhaps as</p> <p>14 early as April, 2011. So with that representation</p> <p>15 in mind, when this letter was being written or you</p> <p>16 authorized Exhibit 140 to be sent, you were not</p> <p>17 aware of incidences of actual confusion between</p> <p>18 Mr. Keating's products and Glidewell's mark;</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Now, you're saying other parties have</p> <p>22 also been riding the coat tails of Glidewell's</p> <p style="text-align: right;">Page 210</p>	<p>1 we do talk about that.</p> <p>2 Q. It also uses the motto, "More brawn than</p> <p>3 beauty"; correct?</p> <p>4 A. That's true. That was something early on</p> <p>5 was decided would be some effective marketing.</p> <p>6 Q. And Mr. Keating can refer to his full</p> <p>7 contour zirconia solution as ideal for bruxers as</p> <p>8 well; correct?</p> <p>9 A. I guess he could. I don't see his doing</p> <p>10 that, but I'm sure he could. Instead it's</p> <p>11 uncompromising esthetics, outstanding strength,</p> <p>12 and flawless fit.</p> <p>13 Q. It sounds like he's promoting the</p> <p>14 product, which is understandable; correct?</p> <p>15 A. Definitely.</p> <p>16 Q. And does he do anything on here that's</p> <p>17 trying to suggest to the dentists that he's</p> <p>18 affiliated as an authorized lab of Glidewell</p> <p>19 Laboratories?</p> <p>20 A. He does not have anything on there saying</p> <p>21 he's an authorized lab, no.</p> <p>22 Q. And, in fact, at this time, May, 2011,</p> <p style="text-align: right;">Page 212</p>
<p>1 mark; correct?</p> <p>2 A. That's true.</p> <p>3 Q. Is that also by using the word brux,</p> <p>4 b-r-u-x?</p> <p>5 A. Sometimes that and sometimes b-r-u-x-e-r.</p> <p>6 Q. Sometimes bruxer, b-r-u-x-e-r?</p> <p>7 A. Yeah.</p> <p>8 Q. Now, you would agree that Mr. Keating and</p> <p>9 these other parties can use the word bruxer in</p> <p>10 their promotional materials to refer to patients</p> <p>11 with bruxism; correct?</p> <p>12 A. I think that that is something that's</p> <p>13 permitted. We don't stop anyone from doing that.</p> <p>14 That isn't anything he did do here. I don't think</p> <p>15 it's great marketing to pigeonhole a product that</p> <p>16 way, and he probably sees it that way too because</p> <p>17 it's not mentioned in his advertising anywhere in</p> <p>18 here, but someone could do that, ideal for</p> <p>19 bruxers.</p> <p>20 Q. In fact, ideal for bruxers is a saying</p> <p>21 Glidewell uses, correct, in its marketing?</p> <p>22 A. I'd have to look at it, but it seems like</p> <p style="text-align: right;">Page 211</p>	<p>1 Glidewell had its authorized lab program in place</p> <p>2 for some time; correct?</p> <p>3 A. I don't know how long it had been in</p> <p>4 place, but we can look into that.</p> <p>5 Q. And there were a number of authorized</p> <p>6 labs, a large number of authorized labs of</p> <p>7 Glidewell Laboratories by May, 2011, right?</p> <p>8 A. For sure, yes.</p> <p>9 Q. And those labs would be using BruxZir;</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Which Mr. Keating is not using; correct?</p> <p>13 A. He's not.</p> <p>14 MR. JANKOWSKI: Why don't we take a short</p> <p>15 break.</p> <p>16 (Recess taken from 3:55 p.m. to</p> <p>17 4:07 p.m.)</p> <p>18 BY MR. JANKOWSKI:</p> <p>19 Q. I'm going to show you an exhibit that the</p> <p>20 court reporter has marked as Exhibit 141. It's a</p> <p>21 document produced by Glidewell in this case</p> <p>22 bearing production No. GL 241 from page 25 of 99</p> <p style="text-align: right;">Page 213</p>

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<p>1 to 49 of 99. I'll have you take a look at that</p> <p>2 exhibit.</p> <p>3 (Exhibit No. 141 was marked for</p> <p>4 identification.)</p> <p>5 THE WITNESS: This name looks familiar.</p> <p>6 BY MR. JANKOWSKI:</p> <p>7 Q. That's my question actually. Do you</p> <p>8 recognize -- it's a series of e-mails and written</p> <p>9 correspondence that includes your name on it. I'd</p> <p>10 like you to tell me if you recognize this.</p> <p>11 A. I recognize that.</p> <p>12 Q. And, in fact, we've been discussing today</p> <p>13 about third parties using marks that might be</p> <p>14 confusingly similar to Glidewell. Is this similar</p> <p>15 to correspondence you had with a third party that</p> <p>16 you believe was using a mark that was confusingly</p> <p>17 similar to Glidewell's mark?</p> <p>18 A. Yes.</p> <p>19 Q. And so this is -- again, this was</p> <p>20 produced to us this way by Glidewell. This is a</p> <p>21 true and correct copy of the correspondence you</p> <p>22 had with this third party?</p> <p style="text-align: right;">Page 214</p>	<p>1 Q. I see on page 48 of 99, it looks like</p> <p>2 you're making a reference to -- first of all, let</p> <p>3 me just state, for the record, your e-mail is</p> <p>4 dated January 19, 2011. It's being sent to Fusion</p> <p>5 Dental Lab Solutions; correct?</p> <p>6 A. Yes, and I remember that name too because</p> <p>7 that was the first infringement letter I ever</p> <p>8 sent, and that's the first infringement letter</p> <p>9 I -- that's the first active infringement I am</p> <p>10 aware of, and that is a front for crowns from</p> <p>11 China, as I subsequently learned.</p> <p>12 Q. On the page marked page 48 of 99, there's</p> <p>13 the statement in your communication to Fusion. It</p> <p>14 says, "Your promotion in Lab Management Today of</p> <p>15 full solid bruxer, spelled b-r-u-x-e-r, zirconia</p> <p>16 is using a similar mark where there's an</p> <p>17 appreciable likelihood of confusion."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And bruxer is in all bold.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p style="text-align: right;">Page 216</p>
<p>1 A. Let me see here exactly how this is</p> <p>2 arranged.</p> <p>3 Q. It appears that it's, as e-mails often</p> <p>4 are, the farther back in the document you get, the</p> <p>5 earlier the communications are because the e-mails</p> <p>6 get put later on top of earlier.</p> <p>7 A. Okay. This is my recollection of it, and</p> <p>8 I would just add that it actually began</p> <p>9 January 19, and that would have been the first</p> <p>10 e-mail. I'm not seeing anything else like a</p> <p>11 picture of anything as an example which might have</p> <p>12 been on the original. I don't know where it would</p> <p>13 go if it ever had been there. It seemed like it</p> <p>14 would have been probably showing up in there as</p> <p>15 something that didn't print or something. I'm</p> <p>16 just guessing. I'd have to go back to actually</p> <p>17 the book that I sent or maybe it shows up later</p> <p>18 on. I don't know.</p> <p>19 Usually I put an example of what it is</p> <p>20 I'm seeing where it looks like they're using the</p> <p>21 very mark that is confusingly similar to ours. I</p> <p>22 see I did put in there what the spelling of it is.</p> <p style="text-align: right;">Page 215</p>	<p>1 Q. This is an example of the word bruxer</p> <p>2 being the source of the confusion in your mind;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. Is it the appearance of the mark at all</p> <p>6 or is it just the word bruxer, however it appears,</p> <p>7 however font or color?</p> <p>8 A. It is just the way that it appears there.</p> <p>9 Q. Okay. And your interpretation here is,</p> <p>10 again, that this is confusingly similar to</p> <p>11 Glidewell's BruxZir mark; correct? This is</p> <p>12 exactly what this letter is saying; correct?</p> <p>13 A. That's true.</p> <p>14 Q. If you turn to page 47 of 99; so move</p> <p>15 forward one page, we get to see Fusion Dental</p> <p>16 Lab's response to your letter.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. How did they respond?</p> <p>20 A. They responded with the fact that the</p> <p>21 word "brux," they put it in quotes, is a common</p> <p>22 clinical term for a person with bruxism.</p> <p style="text-align: right;">Page 217</p>

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1 Q. Right.
2 Which is a true statement; correct?
3 A. I think so. I'm not a doctor, but I
4 think all doctors know what that would mean if
5 they saw that.
6 Q. Right.
7 And that's all they say. It's a very
8 short communication they sent; correct?
9 A. That's true.
10 Q. And then it looks like you followed up
11 with another communication after that, correct,
12 asking them to cease and desist despite their
13 explanation of what they think the word "bruxer"
14 means in their mark; correct?
15 A. On the 21st?
16 Q. Yes.
17 A. Let me see and go back to this date.
18 5:03 p.m., yeah. 21st. It looks like the next
19 morning. Yeah, this looks like the 19th at
20 3:27 p.m., and by the next morning, they're going
21 to see if we're serious, and so I followed up with
22 a further explanation it looks like on the
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1 following morning.
2 Q. And then on Friday, the 21st about
3 16 minutes later, they responded again and said
4 that the name of their crown is full solid bruxer
5 zirconia, and they say, "which is the description
6 of the type of crown we offer, a full solid bruxer
7 zirconia crown for bruxers, patient of bruxism.
8 Please read our advertisement precisely."
9 So they don't think they're trying to be
10 similar to Glidewell at all, do they?
11 A. Naturally, not. They would like to just
12 keep using that so long as they're allowed to. Of
13 course, this is as of 2011, and we've already been
14 on the market now since June, 2009, and I don't
15 know how many millions of dollars we've spent. So
16 sure, they would love it if they could just do
17 that.
18 Q. But do you think they -- are they somehow
19 trying to copy Glidewell? Is this innocent
20 infringement or malicious infringement?
21 A. I don't know if you call it malicious,
22 but it's definitely intentional infringement just
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1 like you associate with China that they could get
2 away with anything that they do. I'm surprised
3 they didn't say "made in Switzerland" while they
4 were at it.
5 Q. If you turn to page 43 of 99, there's a
6 communication that you sent still on January 12.
7 Now it's in the afternoon. This is in response to
8 them saying, "There's no confusing similarity
9 between the marks." You state, "It is pronounced
10 the same, isn't it?"
11 Do you see that?
12 A. I do.
13 Q. I think you testified to that earlier as
14 well that that's one of the sources of the
15 confusion is the pronunciation; correct?
16 A. That's a possibility. You never know how
17 someone is going to pronounce something, of
18 course, but it's definitely giving them an
19 opportunity to say whatever they're going to say
20 next. I see they say, "No, it's not pronounced
21 the same." For them, it might not be. Who knows.
22 Q. On page 41 of 99, we're up to April 19.
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1 So this is a little further along in time. It
2 looks like you were sending additional information
3 to them basically, a little stronger letter.
4 A. That's correct.
5 Q. And then I also see if I move forward to
6 page 39 of 99, I see something referencing the
7 notice of a filing of a complaint in U.S. District
8 Court.
9 Do you see that?
10 A. I do.
11 Q. So did Glidewell file a lawsuit against
12 Fusion Dental in district court?
13 A. No.
14 Q. I'm confused then. What's been
15 referenced on page 39 of 99?
16 A. It is a cease and desist letter in the
17 form of a notice of complaint.
18 Q. This says, "Notice of filing of
19 complaint"?
20 A. Right. It says, "Subject, Notice of
21 complaint," and in block letters, "Notice of
22 filing of complaint."
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<p>1 Q. So you weren't trying to put them on</p> <p>2 notice that you'd filed a complaint against them?</p> <p>3 A. They might draw that conclusion from</p> <p>4 that. I don't know that they knew that it had</p> <p>5 been filed or hadn't at this point.</p> <p>6 Q. Well, had you prepared a complaint to</p> <p>7 file against them?</p> <p>8 A. No, only this, something that would be --</p> <p>9 something to get their attention. I especially</p> <p>10 love the block letters.</p> <p>11 Q. Right. I see that.</p> <p>12 And did it get their attention?</p> <p>13 A. Apparently, it did.</p> <p>14 Q. And why do you say that?</p> <p>15 A. They stopped using the infringing mark in</p> <p>16 their advertising.</p> <p>17 Q. I guess the communication on page 36 is a</p> <p>18 repeat, it looks like, of the April 19</p> <p>19 communication.</p> <p>20 A. Well, maybe it's part of something that</p> <p>21 precedes it.</p> <p>22 Q. I think what it is is some of these</p> <p style="text-align: right;">Page 222</p>	<p>1 very beginning here.</p> <p>2 Q. What I'm inclined to do here --</p> <p>3 A. I think that is the last one, and I think</p> <p>4 it's just out of order. I think it might be the</p> <p>5 last one, and all of these other ones were</p> <p>6 earlier.</p> <p>7 Q. Let me mark the exhibit in a way which is</p> <p>8 going to be less confusing. If it's okay with</p> <p>9 you, it looks to me like this is just repeating</p> <p>10 what we just went through up to this</p> <p>11 communication.</p> <p>12 A. Yes. I think that would be the last one</p> <p>13 and these others --</p> <p>14 Q. That's the last one.</p> <p>15 A. -- would be January 21.</p> <p>16 Q. Let me try to rebuild it in that way. So</p> <p>17 starting on 39.</p> <p>18 (Discussion off the record.)</p> <p>19 MR. JANKOWSKI: Let me just state, for</p> <p>20 the record, then, Exhibit 141 is, for the record,</p> <p>21 GL 241 from page 39 of 99 through 49 of 99.</p> <p>22 ///</p> <p style="text-align: right;">Page 224</p>
<p>1 communications seem like they're duplicated in the</p> <p>2 production.</p> <p>3 A. Maybe something precedes it and has that</p> <p>4 as a part of it. It looks like the date is</p> <p>5 January 19, 2011.</p> <p>6 Q. Right. That's when they start.</p> <p>7 A. It looks like right after that is</p> <p>8 attached to it this second notice of trademark</p> <p>9 infringement.</p> <p>10 Q. The last communication I'm seeing on here</p> <p>11 is the all capital letters communication that you</p> <p>12 sent to Fusion on May 16, 2011.</p> <p>13 Would you agree?</p> <p>14 A. Let me see the date of that. That is</p> <p>15 dated May 16, 2011.</p> <p>16 Q. Right.</p> <p>17 A. And these other things are dated --</p> <p>18 Q. Everything after that seems to be</p> <p>19 dated --</p> <p>20 A. This is before that, or it's dated</p> <p>21 January 21. That might be an attachment to</p> <p>22 something prior to it. I'd have to go back to the</p> <p style="text-align: right;">Page 223</p>	<p>1 BY MR. JANKOWSKI:</p> <p>2 Q. Okay. Mr. Allred, I think you already</p> <p>3 testified that -- so the communication you sent on</p> <p>4 May 16, Notice of Filing of Complaint in U.S.</p> <p>5 District Court, was successful. They did react,</p> <p>6 and they changed the name of their product; is</p> <p>7 that correct?</p> <p>8 A. I don't know what they changed their name</p> <p>9 to, but they did stop using the confusingly</p> <p>10 similar mark.</p> <p>11 Q. They changed it to a name you were</p> <p>12 satisfied with?</p> <p>13 A. Yes.</p> <p>14 Q. That's why there's no more correspondence</p> <p>15 on that?</p> <p>16 A. Yes.</p> <p>17 (Discussion off the record.)</p> <p>18 BY MR. JANKOWSKI:</p> <p>19 Q. So next I'm going to hand you a document</p> <p>20 which has been marked by the court reporter as</p> <p>21 Exhibit 142. It is -- it was produced by</p> <p>22 Glidewell in this case with production Nos. GL 241</p> <p style="text-align: right;">Page 225</p>

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1 from page 54 of 99 through 57 of 99.
2 (Exhibit No. 142 was marked for
3 identification.)
4 BY MR. JANKOWSKI:
5 Q. If you can just briefly look at that and
6 tell me if you recognize it.
7 A. Pittman Dental. I recognize that.
8 Q. And, in fact, this is another situation
9 where there's multiple communications, a string of
10 communications. I guess there's two in this
11 instance; right? One on February 9, 2011, and one
12 on February 15, 2011?
13 A. It looks like a notice that is
14 substantially similar to the very first one I ever
15 sent and then beyond that perhaps a response to
16 something they said.
17 Q. Well, on the front page, it says, "Hello,
18 Rudy. Thank you for your call and your
19 explanation."
20 It looks like to me like Pittman called
21 you.
22 A. Okay.

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1 Q. Do you have a recollection of that?
2 A. Maybe if I read what I wrote here, I
3 would remember his call.
4 Q. Sure.
5 A. Okay. I remember this. But I don't
6 remember his call.
7 Q. This is another instance of a third party
8 using a confusingly similar mark in the position
9 of Glidewell; correct?
10 A. From the looks of it, he was calling and
11 must have expressed some kind of feeling about --
12 is there more to this? Is there any other thing
13 from Pittman anywhere in the file?
14 Q. I don't believe so.
15 A. Okay. So I responded. It looks like I'm
16 still providing some arguments that might make
17 sense to him as far as why we would want to stop
18 him from using a confusingly similar mark. It
19 doesn't look like we've necessarily reached an
20 understanding at this point. So I don't know
21 what -- if there's any further things along here.
22 Q. And if you look on page 56 of 99, you see

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1 the letter that you sent. As I think you just
2 testified, it's very similar to the letter you
3 sent to Fusion Dental; correct?
4 A. Similar.
5 Q. Did you have a template letter you were
6 sending --
7 A. Oh, yeah, you bet. We have a place in
8 here that would change as far as what the mark was
9 they were using.
10 Q. On page 56 of 99, you can see that
11 halfway down the page. In this instance Pittman
12 was using BRUXER in all caps, B-R-U-X-E-R,
13 All-Zirconia Crown; correct? That was the
14 confusingly similar mark?
15 A. It looks like from the back. That's
16 exactly what it looked like.
17 Q. Here's an example where you did attach a
18 visual on the last page of Exhibit 142, correct,
19 of their mark?
20 A. It looks like. I'm not sure if that
21 printed. I must have printed an image there, it
22 looks like.

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1 Q. And you explained to Pittman Dental just
2 as you explained to Fusion how BRUXER was
3 confusing with Glidewell's mark; correct?
4 A. Yes.
5 Q. And if you look on the front page of
6 Exhibit 142, you make the same argument again that
7 BruxZir and BRUXER sounds the same; correct?
8 A. I did write that.
9 Q. Now, do you know, did Pittman change
10 their name?
11 A. They did, yes.
12 Q. I notice that you cc'd Robin Bartolo on
13 this e-mail.
14 Do you see that?
15 A. I do.
16 Q. And why are you cc'ing Mr. Bartolo?
17 A. I don't know. I'd have to look at this
18 letter right here.
19 Q. Just to help guide your attention, I
20 think at the top of page 55 of 99 you make
21 reference to Mr. Bartolo's contact information.
22 A. I see why I cc'd Robin Bartolo on there.

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<p>1 Q. Why did you cc him?</p> <p>2 A. It looks to me that that goes along with</p> <p>3 what is at the bottom of this second e-mail that's</p> <p>4 apparently responding to a telephone conversation</p> <p>5 that I had with him.</p> <p>6 Q. Isn't the reason you're cc'ing</p> <p>7 Mr. Bartolo that you want to offer Pittman Dental</p> <p>8 Labs the opportunity to join Glidewell's family of</p> <p>9 authorized labs?</p> <p>10 A. That's what it says here in the last</p> <p>11 paragraph.</p> <p>12 Q. Because since Pittman obviously is</p> <p>13 offering an all-zirconia crown and this is an</p> <p>14 opportunity, you're saying, for them to join</p> <p>15 Glidewell and sell BruxZir crowns; correct?</p> <p>16 A. Well, I don't know what our telephone</p> <p>17 conversation was, but it's obviously a way where</p> <p>18 he can actually promote his services using the</p> <p>19 very trademark that looked to me like he was</p> <p>20 trying to copy. He can use the real trademark.</p> <p>21 Q. Now, do you think he was trying to copy a</p> <p>22 trademark, or was he just using the word "brux" in</p> <p style="text-align: right;">Page 230</p>	<p>1 call and explanation today concerning the use" --</p> <p>2 Q. You don't recall what his explanation</p> <p>3 was?</p> <p>4 A. Pittman. I'm not even sure where they're</p> <p>5 located. Let me see here. Centennial Circle,</p> <p>6 Gainesville, Georgia. It just doesn't ring a</p> <p>7 bell.</p> <p>8 Q. If you look on the first page of</p> <p>9 Exhibit 142 and you go down to the fifth paragraph</p> <p>10 down, it says, "Prior to the promotion of BruxZir</p> <p>11 mark, the use of all-ceramic crowns, even for</p> <p>12 patients with parafunctional problems, was</p> <p>13 counterintuitive."</p> <p>14 Do you see that?</p> <p>15 A. I see that. I see it. It's not very</p> <p>16 artfully worded. It should have said, "Even for</p> <p>17 patients with parafunctional problems was</p> <p>18 counterintuitive for restoration of posterior</p> <p>19 teeth" is probably what I was getting at there.</p> <p>20 Q. Parafunctional problems is a reference to</p> <p>21 bruxism; correct?</p> <p>22 A. That is, yes.</p> <p style="text-align: right;">Page 232</p>
<p>1 reference to patients with bruxism?</p> <p>2 A. No. I'm pretty sure he was trying to</p> <p>3 copy something that he realized by then was very</p> <p>4 popular, a name that doctors might -- it might</p> <p>5 resonate with doctors.</p> <p>6 Q. And did Pittman push back and say they</p> <p>7 were not confusingly similar?</p> <p>8 A. I don't see that here. I don't remember</p> <p>9 what he might have said in whatever telephone call</p> <p>10 we had.</p> <p>11 Q. Whatever he said, you responded to it by</p> <p>12 pointing out the similarity in pronunciation;</p> <p>13 right?</p> <p>14 A. I sent another e-mail February 14.</p> <p>15 Almost five days later. He must have called</p> <p>16 sometime after Wednesday, and it looks like it was</p> <p>17 probably Monday, and I probably wrote him back.</p> <p>18 That's all I can guess from this. "Thank you for</p> <p>19 your call." He might have even left a voicemail</p> <p>20 for all I know. It could have been that.</p> <p>21 Q. You don't recall?</p> <p>22 A. Let me see again. "Thank you for your</p> <p style="text-align: right;">Page 231</p>	<p>1 Q. And so --</p> <p>2 A. And even then it probably would have been</p> <p>3 better to say "All-ceramic crowns irrespective of</p> <p>4 patients with parafunctional problems was</p> <p>5 counterintuitive as a material of choice for the</p> <p>6 restoration of posterior teeth," but obviously I</p> <p>7 didn't put it in that many words.</p> <p>8 Q. This is suggestive that the telephone</p> <p>9 call you had with the representative from Pittman</p> <p>10 Dental raised the issue that they were using the</p> <p>11 word "BRUXER," spelled B-R-U-X-E-R, as a reference</p> <p>12 to a patient with bruxism; correct?</p> <p>13 A. Could be. I don't know that this is</p> <p>14 suggesting it, but he could have been raising that</p> <p>15 point, sure.</p> <p>16 Q. Okay. You can set that one aside and let</p> <p>17 me show you what's been marked as Exhibit 143. It</p> <p>18 bears production No. GL 241 page 58 of 99 through</p> <p>19 page 70 of 99.</p> <p>20 A. Okay.</p> <p>21 (Exhibit No. 143 was marked for</p> <p>22 identification.)</p> <p style="text-align: right;">Page 233</p>

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1 BY MR. JANKOWSKI:
2 Q. This appears to be a communication with a
3 dental laboratory called R-Dent.
4 Do you recall having an e-mail exchange
5 with them?
6 A. I do.
7 Q. In fact, this is just another example of
8 the same type of exchange you had with Fusion and
9 you had with Pittman; correct?
10 A. It is. I see there's an image there that
11 doesn't come through. Maybe it does later, but
12 other than that, it looks like probably -- the
13 spacing looks like it got changed around a little
14 bit, but that letter looks just like the other
15 letter to Fusion even. I don't see if there's
16 additional facts added. It does have the word
17 R-brux in there.
18 Q. Where are you seeing R-brux? Which page?
19 A. Page 69.
20 Q. Right towards the top; correct.
21 So this is an example where they're not
22 using the entire word "bruxer" but rather just the
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1 form brux, b-r-u-x; correct?
2 A. That's correct.
3 Q. You're not saying the "R" part is
4 confusingly similar. You're saying the "brux"
5 part is; correct?
6 A. That's correct.
7 Q. It's fair to say that R-Dent disagreed
8 that they should not be allowed to use that name;
9 correct?
10 A. They may have initially.
11 Q. And do you know what happened with
12 R-Dent? Did they change their name?
13 A. They did.
14 Q. Do you know whether they became an
15 authorized lab?
16 A. I don't know if they did or not. It
17 seemed to me at this point in time that's what
18 they were planning on doing.
19 Q. And, in fact, again, I think you offered
20 to put them in communication with Mr. Bartolo;
21 correct?
22 A. Correct. That's how you would become an
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1 authorized dental laboratory. You'd have to order
2 the blocks. It looks to me like, as far as I knew
3 back then, he had decided to offer the product
4 that would allow him to be a certified laboratory.
5 Q. Which means the BruxZir milling blocks?
6 A. That's right, BruxZir. And he was
7 wanting to know if he could change it after he
8 finished using the prescriptions that he had that
9 already had the confusingly similar mark on it.
10 Q. Okay. You can set that one aside. Thank
11 you.
12 Next I'll show you what the court
13 reporter has marked Exhibit 144, which bears
14 production Nos. GL 241, page 7 of 99 through
15 page 9 of 99.
16 (Exhibit No. 144 was marked for
17 identification.)
18 BY MR. JANKOWSKI:
19 Q. If you can look at that and tell me if
20 you recognize it.
21 A. Authentic.
22 Q. Right. This appears to be an e-mail
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1 exchange between you and Authentic Dental Lab;
2 correct?
3 A. Correct.
4 Q. And do you recall having an e-mail
5 exchange with Authentic Dental Lab?
6 A. I don't recall that for sure. I don't
7 remember Whitney, but I do recall Authentic.
8 Q. And, in fact, this has another example of
9 the form letter that we talked about earlier;
10 correct?
11 A. It is there, and it looks --
12 Q. They're using the mark brux, B-r-u-x,
13 crowns, which is, in Glidewell's mind, confusingly
14 similar; correct?
15 A. That's true. And I guess there's a copy
16 of that use attached.
17 Q. Right.
18 It shows the Assured Dental Lab website
19 where it was copied from; correct?
20 A. True.
21 Q. And what's your understanding? Did
22 Authentic Dental Lab change its mark in response
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1 to your communication?
2 A. Yes, they did. I think it's almost even
3 false advertising because they talk about
4 authentic zirconia which almost conveys in that
5 context the fact that they made their own blocks
6 because Lava is a brand name of 3M. And as far as
7 I know, Authentic Dental Lab is a dental lab that
8 is like 15,000 other dental labs, and they don't
9 make the material that they make their zirconia
10 crowns out of.
11 Q. Do you believe that -- where did
12 Authentic get their zirconia? Do you know?
13 A. Maybe Lava. I don't know. I don't know
14 if it was any other material. No clue. Could
15 have even been our material. You don't really
16 know -- I guess you do know because they weren't
17 buying our blocks at least from us directly and
18 apparently from this they weren't, or it would
19 probably be on here.
20 Q. If they were buying from Glidewell
21 Direct, you'd know about that?
22 A. I'd know about that.

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1 Q. On page 8 of 99 on the bottom of your
2 form letter or template, you again offer them that
3 opportunity to join the list of BruxZir authorized
4 dental laboratories; correct?
5 A. That's true.
6 Q. You say, "If you wish to be on the list,
7 call Glidewell Direct," which is really
8 Mr. Bartolo; correct?
9 A. True.
10 Q. Okay. You can set that aside. Thank
11 you.
12 Next I'd like to have you look at what
13 the court reporter has marked as Exhibit 145,
14 bearing production Nos. GL 241, page 4 of 99
15 through page 6 of 99.
16 (Exhibit No. 145 was marked for
17 identification.)
18 THE WITNESS: Assured Dental Lab. Just
19 one letter.
20 BY MR. JANKOWSKI:
21 Q. This one -- it's just one letter you sent
22 to Assured on April 18, 2011; correct?

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1 A. It looks like one letter, and it may
2 be . . .
3 Q. Do you recall writing to Assured Dental
4 Lab?
5 A. I do.
6 Q. It looks like on the front page of
7 Exhibit 145 you wrote to them because they had a
8 crown they were calling Zir-Brux.
9 A. This one's Zir-Brux.
10 Q. Earlier we had R-brux?
11 A. Correct. Now we have Zir-Brux.
12 Q. Now we have Z-brux; correct?
13 A. Correct.
14 Q. Because there's no more communication, do
15 you know what happened with Assured?
16 A. They stopped using that. They came up
17 with their own mark.
18 Q. Do you know whether they responded in any
19 way claiming they wanted to keep using it or
20 should be allowed to keep using it or anything
21 like that?
22 A. I think that they would like to have used

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1 it, but then, again, they don't even make these
2 crowns in the United States. I think they came
3 from Taiwan. It just wasn't anything we were
4 going to allow, and they saw it our way.
5 Q. The dental lab is not located in Taiwan;
6 right?
7 A. No, but their material is. I remember
8 this lab. This is a lab that's like a front for
9 foreign-made crowns. If I remember correctly,
10 that is the same outfit. I remember Portland,
11 Oregon. What I'm not quite sure about, I don't
12 know if it's China. I think it could be either
13 the Philippines or Taiwan. I don't know for sure
14 that it's China, but it could be from China. I
15 forget exactly where, but it was outside the
16 country. Vietnam for all I know, but it was
17 definitely foreign-made crowns.
18 Q. So not just the zirconia but the crowns
19 themselves were foreign made?
20 A. I don't know about the zirconia. I don't
21 know what block it would be. I don't think anyone
22 would know probably from their advertising that --

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<p>1 certainly that would help if someone was not</p> <p>2 trying to create confusion, they might actually</p> <p>3 disclose the fact that they were using a zirconia</p> <p>4 product that was from someone that the doctor</p> <p>5 might know, and he could maybe put two and two</p> <p>6 together. These people never do that just like</p> <p>7 Keating never did.</p> <p>8 Q. I'm sorry. Keating never did what?</p> <p>9 A. Never disclosed the material he was</p> <p>10 using. When he was doing the advertising, he</p> <p>11 never said, "KDZ Bruxer made from blocks from 3M."</p> <p>12 Q. And would that have made a difference in</p> <p>13 your assessment whether there was a likelihood of</p> <p>14 confusion?</p> <p>15 A. Not necessarily. I think it would have</p> <p>16 showed that at least a dentist would have had a</p> <p>17 fighting chance of knowing there might be</p> <p>18 something more to this similarity in the mark than</p> <p>19 something obvious on its face.</p> <p>20 Q. Do you think dentists care very deeply</p> <p>21 about where the zirconia comes from in the full</p> <p>22 contour --</p> <p style="text-align: right;">Page 242</p>	<p>1 (Exhibit No. 146 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. JANKOWSKI:</p> <p>4 Q. It appears to be a communication with</p> <p>5 China Dental Outsourcing, Inc.</p> <p>6 A. I remember that.</p> <p>7 Q. Do you remember writing to China Dental</p> <p>8 Outsourcing, Inc.?</p> <p>9 A. I do.</p> <p>10 Q. What do you recall about writing to them?</p> <p>11 A. I remember trying to find out who to</p> <p>12 write to.</p> <p>13 Q. It looks like you found somebody.</p> <p>14 A. Yeah, it looks like I figured it out.</p> <p>15 Some of these places are pretty well cloaked. It</p> <p>16 looked like I even would have been able with</p> <p>17 Google Maps to find a picture of the factory that</p> <p>18 it was coming from. They look like a pretty big</p> <p>19 outfit too.</p> <p>20 Q. On the front page of Exhibit 146, you</p> <p>21 indicate that their mark was Bruxer, B-r-u-x-e-r,</p> <p>22 All Zirconia; correct?</p> <p style="text-align: right;">Page 244</p>
<p>1 A. Some certainly do. I don't know how many</p> <p>2 dentists, but I know more and more states are</p> <p>3 actually passing laws requiring dental</p> <p>4 laboratories to disclose the material they use,</p> <p>5 where it's made, and not just the crowns if</p> <p>6 they're made here but even the material that it's</p> <p>7 made of which you then can tell where that's from</p> <p>8 also. Some states you have to do that and put it</p> <p>9 on the invoices that you send the crowns back.</p> <p>10 It's all in response to fears about stuff from</p> <p>11 China that's not properly controlled and might</p> <p>12 have lead in it even.</p> <p>13 Nothing to do necessarily with zirconia</p> <p>14 crowns, but definitely is enough of a concern</p> <p>15 among someone, maybe the public, maybe politicians</p> <p>16 more than dentists, but it's definitely a growing</p> <p>17 trend.</p> <p>18 Q. Next I'll show you a document the court</p> <p>19 reporter has marked as Exhibit 146, bears</p> <p>20 production Nos. GL 241 page 16 of 99 through</p> <p>21 page 19 of 99.</p> <p>22 ///</p> <p style="text-align: right;">Page 243</p>	<p>1 A. True.</p> <p>2 Q. So, again, the similarity that's of a</p> <p>3 concern to Glidewell is the use of Bruxer;</p> <p>4 correct?</p> <p>5 A. Especially when used as a mark.</p> <p>6 Q. And I think this is the only</p> <p>7 communication I saw with this entity. Did they</p> <p>8 stop using the name?</p> <p>9 A. They stopped using the name. If this is</p> <p>10 the only thing you have, then this is the only</p> <p>11 communication. I thought we got something back</p> <p>12 from them saying, "Okay, won't do it again," but I</p> <p>13 don't see that here; so I don't know whether they</p> <p>14 ever wrote anything back or not, but they did stop</p> <p>15 using it. They couldn't resist using the word</p> <p>16 "bruxer" if I remember. I think they changed it.</p> <p>17 I think they put on their site "good for bruxers."</p> <p>18 Q. Similar to what Glidewell says, "Ideal</p> <p>19 for bruxers"?</p> <p>20 A. Sort of. I don't know if that's even on</p> <p>21 our site anymore. I'd have to look. I know that</p> <p>22 was the initial marketing campaign to indicate</p> <p style="text-align: right;">Page 245</p>

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<p>1 something durable even though it was all ceramic.</p> <p>2 Q. Okay. Next I'm going to show you what's</p> <p>3 been marked as Exhibit 147, bearing production</p> <p>4 Nos. GL 241, 71 of 99 through 97 of 99.</p> <p>5 (Exhibit No. 147 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. JANKOWSKI:</p> <p>8 Q. This appears to be communication with</p> <p>9 Showcase Dental Laboratories.</p> <p>10 A. I remember them. Sure. It's getting</p> <p>11 more recent here.</p> <p>12 Q. The first letter here looks like it was</p> <p>13 written in January, 2012; correct?</p> <p>14 A. Yes.</p> <p>15 Q. We're getting more recent in time as we</p> <p>16 go through the exhibits.</p> <p>17 A. It looks like January 10 was the first</p> <p>18 letter.</p> <p>19 Q. And looking on the page bearing</p> <p>20 production No. Page 77 of 99, it looks like their</p> <p>21 mark that was of a concern to you was Zir-Bruxer</p> <p>22 Crowns. Z-i-r-B-r-u-x-e-r Crown; correct?</p> <p style="text-align: right;">Page 246</p>	<p>1 last page is you attached the image with the</p> <p>2 BruxZir at the bottom to show the copyrighted</p> <p>3 image that they cut and paste into their thing?</p> <p>4 A. It says right here. It's plucked off of</p> <p>5 something.</p> <p>6 Q. In other words, I don't think the image</p> <p>7 there that has BruxZir on the last page --</p> <p>8 A. You know what, that might be right.</p> <p>9 Maybe it's to show where they got -- I bet that's</p> <p>10 right. They plucked the picture -- they erased</p> <p>11 the name, and they put it with this advertisement</p> <p>12 for zircon, it looks like. I can't really read</p> <p>13 the rest of the print. The e-mail could have been</p> <p>14 large, and they could have seen whatever it was.</p> <p>15 Somewhere or another here I think they also were</p> <p>16 using a name somewhere, Zir-Bruxer Crown.</p> <p>17 Q. Right.</p> <p>18 A. I don't know where that shows up on here</p> <p>19 because it's too small. I assume it's in that</p> <p>20 block.</p> <p>21 Q. Your letter makes reference to it?</p> <p>22 A. Yes.</p> <p style="text-align: right;">Page 248</p>
<p>1 A. That is true, and it looks like they also</p> <p>2 were pirating an image of the BruxZir crown for</p> <p>3 their advertising. Even they took the name even.</p> <p>4 They didn't even take the name off it. They</p> <p>5 actually have our trademark name right next to it.</p> <p>6 Q. An image that they -- an image associated</p> <p>7 with Glidewell that Glidewell used in their</p> <p>8 materials?</p> <p>9 A. Not only that, it's our trademark. It</p> <p>10 would have been something probably plucked right</p> <p>11 from our site or some kind of advertising. They</p> <p>12 didn't even change the name.</p> <p>13 Q. You're looking on page 97 of 99, the last</p> <p>14 page?</p> <p>15 A. Yes.</p> <p>16 Q. I see.</p> <p>17 A. It looks like the three crowns is also in</p> <p>18 their own advertising where they have it next to</p> <p>19 zircon. I think this Showcase might also be a</p> <p>20 showcase for foreign made crowns, possibly from</p> <p>21 China.</p> <p>22 Q. So the image -- the way I interpret this</p> <p style="text-align: right;">Page 247</p>	<p>1 Q. So they must have been using it.</p> <p>2 If you look on page 76 of 99, they pushed</p> <p>3 back like Fusion pushed back and Pittman pushed</p> <p>4 back; correct? You see how they're now</p> <p>5 referencing Wikipedia's entry for "bruxism" and</p> <p>6 the reference to a bruxer as somebody who suffers</p> <p>7 from bruxism?</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Then as you did with the other dental</p> <p>11 labs, you wrote back explaining why it's</p> <p>12 confusingly similar to Glidewell; correct?</p> <p>13 A. That's true.</p> <p>14 Q. And ultimately do you know what happened</p> <p>15 with this particular third party?</p> <p>16 A. Well, interestingly enough, it's right</p> <p>17 here, and it's from their website which is part of</p> <p>18 the package which is, I think, interesting because</p> <p>19 they actually printed the infringement letter on</p> <p>20 their site as a way to acknowledge the fact that</p> <p>21 they used to use a mark that they decided not to</p> <p>22 use anymore and here's why. So they printed my</p> <p style="text-align: right;">Page 249</p>

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1 letter, and they put my name for all posterity.
2 Q. There it is on the front page of the
3 exhibit.
4 A. It's the front page of this exhibit. I
5 think of it more as maybe the back page of their
6 site. It's not something that was on the -- their
7 website the minute you pull it up, but it was in
8 their website somewhere, and I remember seeing
9 that and thinking, "Oh, that's interesting.
10 That's never happened before." Maybe someone in
11 some damning way like, "Look what they said," but
12 it seemed to me like they were not too judgmental
13 about the whole thing. They seemed to acknowledge
14 the fact that it was a mark that was confusingly
15 similar, and they certainly had other options to
16 use, and they decided to do that.
17 Q. At the bottom of the front page, it looks
18 like they changed their name to Full Contour
19 Zirconia?
20 A. I'd have to see that on here, but I
21 wouldn't be surprised if that's what you're
22 looking at. "We have hereby changed the" -- yeah,
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1 definitely. That isn't really much of a mark.
2 Q. But it certainly --
3 A. It's acceptable.
4 Q. Acceptable to Glidewell?
5 A. Definitely.
6 Q. You can put that down.
7 Let me show you what's been marked as
8 Exhibit 148, bearing production Nos. 241 pages 1
9 of 99 through 3 of 99.
10 A. To Sarah Wang.
11 Q. Right.
12 (Exhibit No. 148 was marked for
13 identification.)
14 BY MR. JANKOWSKI:
15 Q. This is communication that appears to
16 have been sent in March of 2012 to Sarah Wang?
17 A. To ADL Dental Lab from the looks of the
18 cc.
19 Q. Right. Advanced Dental Laboratory.
20 Does that name ring a bell?
21 A. China. If I look into this further,
22 somehow something gave me the clue that I was
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1 writing to another organization that was selling
2 crowns from China. My attachment on the back
3 there seems to even have some kind of address from
4 China.
5 Q. On the front page of the exhibit, in this
6 example, it looks like the lab is using BruxZir as
7 their mark as one of their products; is that
8 correct?
9 A. That's true. They're actually using the
10 mark spelled exactly like our own trademark.
11 Q. And what happened after this? Do you
12 know? I don't see any other communications. Did
13 they change the name?
14 A. They changed the name. Let me remember
15 here. I think -- you know, I don't know what
16 they're doing. I'd have to go and see if I can
17 even find this site. I think what this was was
18 something that was given to us by a lab that
19 received it as a promotion because they were being
20 marketed to as a laboratory that makes crowns for
21 laboratories, and they were obviously making the
22 assertion that they were providing our material to
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1 make a crown to other labs, and this lab, whoever
2 gave it to us, would have turned us on to it
3 because that's what it looks like this is because
4 there's a copy on the back of an e-mail
5 communication there.
6 Q. The one from Sarah Wang?
7 A. Exactly. It's from and the subject and
8 the date and it's just addressed to, "Dear
9 Friend." So that "Dear Friend" was who knows how
10 many dental laboratories in the United States that
11 don't have a mill, and they don't provide this
12 product. There it is right there. Their main
13 products that you can get from them are PFMs,
14 FMCs, IPS e.max, and zirconia and BruxZir. Who
15 knows if they even have IPS e.max. I assume they
16 do, but we know they didn't have BruxZir.
17 Q. Okay. Do you know who forwarded you that
18 e-mail from Sarah Wang?
19 A. I don't, no. It was a dental laboratory.
20 Q. You don't recall which one?
21 A. I don't remember who it was, but it could
22 have been any of 15,000 dental laboratories.
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1 Q. But there's not 15,000 who would be
2 likely to be forwarding you e-mails like that;
3 correct?
4 A. Could be. I don't know why not.
5 Q. You think it was Mark Jackson?
6 A. Doubt it. I don't think it was. I think
7 if it was, I'd remember that.
8 Q. Okay. I'll show you what the court
9 reporter's marked as Exhibit 149, bearing
10 production Nos. GL 241, page 50 of 99 through 53
11 of 99.
12 (Exhibit No. 149 was marked for
13 identification.)
14 THE WITNESS: Dominion Milling Center.
15 BY MR. JANKOWSKI:
16 Q. Right.
17 Do you recall that second correspondence
18 to Dominion?
19 A. I do.
20 Q. And this particular correspondence
21 actually attaches some invoices, it looks like,
22 and it looks like they're using a mark which is
Page 254

1 Bruxzer, spelled in a different way which is
2 B-r-u-x-z-e-r; correct?
3 A. It's something they would have been able
4 to tell. Obviously, they did it. If I had the
5 e-mail, I could blow it up, but, boy, that's hard
6 to read. I probably say in the letter; right?
7 Q. You do.
8 A. Okay. Yeah, B-r -- this didn't print out
9 right, and it's probably just the software.
10 Probably should have been in quote marks, but it
11 says B-r-u-x-z-e-r, correct?
12 Q. Yes, I think the --
13 A. In fact, I can see where it says
14 "clients" up there. It changed that hyphen to a
15 question mark too. So wherever you see a question
16 mark, it looks like it should be a quote mark.
17 That's through that whole letter there.
18 Q. And you got an enthusiastic response from
19 Scott on the first page of the exhibit.
20 A. Oh, yeah.
21 Q. "Howdy, Keith," with an exclamation mark.
22 Do you remember getting that response?
Page 255

1 A. Sort of. It hasn't been that long ago.
2 I remember old Dominion.
3 Q. He makes reference to a Bruxzer crown
4 with his spelling B-r-u-x-z-e-r?
5 A. I think I am remembering. This is, I
6 think, if I'm not mistaken, this is a lab where if
7 you were to go on their site, it looked like a
8 family tradition, like, dad was the lab owner or a
9 dentist, and his son or them was a lab guy and his
10 son was a lab guy. This is what I'm remembering
11 now.
12 I thought it was pretty funny that
13 Bruxzer crown has existed for years. Obviously,
14 if anyone would know that that wasn't true, it
15 would be a lab guy. But then he said he would
16 stop using it, it looks like, because I'm saying,
17 "Thank you for your prompt response. We certainly
18 appreciate your understanding." He said they'd
19 gladly change. They changed it to FCZ.
20 Q. Right.
21 He basically says the name is a reference
22 to patients with bruxism, correct, but they'll
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1 change the name anyway. Do you have any more
2 communications after this?
3 A. No.
4 Q. Next I'll have you look at Exhibit 150,
5 bearing production Nos. GL 241 page 20 of 99
6 through 24 of 99.
7 (Exhibit No. 150 was marked for
8 identification.)
9 BY MR. JANKOWSKI:
10 Q. Appears to be communications with Dental
11 Dentopia or Dentopia Dental Lab.
12 A. That does sound familiar. I think that's
13 fairly recent too.
14 Q. Right.
15 These communications are, looks like, in
16 August, 2012.
17 Do you recall these e-mail exchanges?
18 A. I remember Dentopia.
19 Q. What do you recall about it?
20 A. Let's see if there's anything in
21 particular here that jumps out. I've got
22 something here I've attached. That is ringing a
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1 bell. I do remember a little bit more about this.
2 You can't really read that letter too much, but it
3 was evidence of the fact they knew who we were --
4 this is as I remember it -- and had called and
5 asked about buying blanks for use in making
6 crowns. It seemed to me at the time they
7 obviously knew the owner of the mark, and we knew
8 about that because we had immortalized that in the
9 system there that they had communicated with us.
10 Q. In this instance based on your letter, it
11 looks like they were using the name Full Zirconia
12 and then in parentheses BruxZir, spelled
13 B-r-u-x-i-r; correct?
14 A. Correct.
15 Q. So this is another instance where they
16 were word for word or letter for letter, I should
17 say, using the registered mark of Glidewell;
18 correct?
19 A. That is true. I don't know if we can
20 tell from this where exactly they're from.
21 MR. TACHNER: Virginia.
22 THE WITNESS: Oh, okay. As far as their
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1 crowns go.
2 BY MR. JANKOWSKI:
3 Q. Now --
4 A. I'm not sure if they're really made in
5 Virginia. I don't know what I knew back then. I
6 guess it would be this e-mail communication, if I
7 could read it closer, might tell me something that
8 they were communicating from the United States or
9 a foreign country. I don't remember -- maybe all
10 this on the bottom. Company name, there's an --
11 it looks like a dot com address. "I am a dental
12 laboratory -- I would like to become an
13 authorized," and then they're spelling it the
14 exact same way, BruxZir -- I can't read the rest.
15 It's smeared.
16 I guess they want to know if they become
17 an authorized and then spelling it our way, if
18 they could use the word. It looks like they just
19 decided to use the word anyway without ever buying
20 our blocks. I'm not quite sure what country
21 they're from, but it could be the United States.
22 Q. Well, Dentopia is in Virginia; correct?
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1 A. I realize that, but you get the companies
2 here locally, but they're actually selling crowns
3 made from other countries. I don't know if that's
4 their case or not.
5 Q. Do you know what happened with Dentopia
6 after your correspondence with them on August 31,
7 2012?
8 A. Well, it looks to me like they decided
9 not to use it from that. I have to read his
10 letter down below here to verify that, but it
11 looks like they decided to stop using the mark
12 there in their advertising.
13 Q. Right.
14 What they say is, "BruxZir is a common
15 name in the dental field," and they say, "We
16 attempted to contact Glidewell regarding the use
17 of the term BruxZir before we started the
18 promotion. We didn't receive any response."
19 Do you see that?
20 A. I do.
21 Q. Do you recall them ever communicating
22 with you in the past about the name?
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1 A. Yes, that was what was attached there.
2 It was evidence of the fact that they queried us,
3 and we replied back. It was pretty much evidence
4 of the fact what he was saying was not correct.
5 He said that anyway.
6 Q. To your knowledge, they stopped using the
7 name?
8 A. To my knowledge, they did.
9 Q. Let me hand you what's been marked
10 Exhibit 151, bearing production Nos. GL 241, 10 of
11 99 through 15 of 99.
12 A. Okay.
13 (Exhibit No. 151 was marked for
14 identification.)
15 MR. TACHNER: Is this the last one?
16 MR. JANKOWSKI: This is the last one of
17 these, yeah.
18 THE WITNESS: I'm glad it wasn't that
19 many labs.
20 BY MR. JANKOWSKI:
21 Q. Mr. Allred, this appears to be a
22 communication in September, 2012, with Barth
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<p>1 Dental Laboratory.</p> <p>2 Do you recall that?</p> <p>3 A. As close in time as it is, I probably</p> <p>4 will if I look at it closer. Maybe these</p> <p>5 attachments will -- something's starting to ring a</p> <p>6 bell here. Oh, yes. This was pretty recent.</p> <p>7 This was an odd one.</p> <p>8 Q. Why do you say that?</p> <p>9 A. "Note, your signature image is not the</p> <p>10 property of Dentistry Today. It is the property</p> <p>11 of Assured DL." If you remember this harkens back</p> <p>12 to an earlier communication with Assured DL where</p> <p>13 it showed their use of the mark Z-BruX, and they</p> <p>14 had a picture of a crown, and if you -- this was</p> <p>15 on their web, and, in fact, if you tabbed on the</p> <p>16 image that they were using, it actually went to a</p> <p>17 Dentistry Today article that talked about the</p> <p>18 introduction of Z-BruX by Authentic Dental Lab.</p> <p>19 So I thought that was interesting that they were</p> <p>20 employing a confusingly similar mark to ours and</p> <p>21 at the same time were passing off a picture that</p> <p>22 had been provided by Assured to Dentistry Today</p> <p style="text-align: right;">Page 262</p>	<p>1 Q. And how did Barth Lab respond to this?</p> <p>2 A. I don't know that they have. Maybe</p> <p>3 that's why I don't remember too well. I don't</p> <p>4 know if they've changed their site. I don't</p> <p>5 remember looking to see if they changed. I don't</p> <p>6 know if they wrote me back. It's pretty recent</p> <p>7 and probably something I ought to check up on.</p> <p>8 September 26, it looks like, 2012.</p> <p>9 Q. So you don't recall, as you sit here</p> <p>10 right now?</p> <p>11 A. I don't recall looking to see and</p> <p>12 noticing they had stopped doing all these things.</p> <p>13 They may have though.</p> <p>14 Q. Very quickly, these aren't new exhibits,</p> <p>15 but I want to put a couple exhibits --</p> <p>16 A. We're done with this one here?</p> <p>17 Q. Yes, you can put that one aside.</p> <p>18 Let me just show you previously marked</p> <p>19 Exhibit 93. Here's an example from Glidewell's</p> <p>20 website that shows the use of the trademark with</p> <p>21 the circle R; correct? Do you see that on the</p> <p>22 website?</p> <p style="text-align: right;">Page 264</p>
<p>1 for their product.</p> <p>2 And also I think -- I'd have to go</p> <p>3 through this and refresh my memory anew, but it</p> <p>4 seemed to me they were misquoting some information</p> <p>5 from a Dr. Christianson. I see some stuff. I see</p> <p>6 his name. It's kind of coming back to me.</p> <p>7 Frankly, we'd have to go through it point by point</p> <p>8 to find out why I wrote what I wrote. Whatever it</p> <p>9 was, they used someone else's picture, they used a</p> <p>10 confusingly similar mark, and they rewrote</p> <p>11 someone's review of our material in some way to</p> <p>12 satisfy their own use of their product.</p> <p>13 Q. This seems to be a lot more information</p> <p>14 than you usually provided with your opening</p> <p>15 letter; correct?</p> <p>16 A. Only because more existed. Usually it's</p> <p>17 some kind of use of the mark that we would like to</p> <p>18 let them know we've seen and that's been brought</p> <p>19 to our attention, and we'd like them to stop using</p> <p>20 it. This particular one just seemed to have more</p> <p>21 and more the more that you got into it. So I put</p> <p>22 every instance of it.</p> <p style="text-align: right;">Page 263</p>	<p>1 A. Yes.</p> <p>2 Q. And that's, in fact, for a dental</p> <p>3 restoration made with the all zirconia -- it's an</p> <p>4 all-zirconia crown basically; correct?</p> <p>5 A. Well, bridge looks like here.</p> <p>6 Q. Or a bridge. But it's a dental</p> <p>7 restoration?</p> <p>8 A. Definitely.</p> <p>9 Q. Okay. And I'll then show you previously</p> <p>10 marked Exhibit 97. So now here's an example from</p> <p>11 Glidewell's website. This is associated now with</p> <p>12 the dental ceramic; right? So this would be the</p> <p>13 product that's associated with the pending</p> <p>14 application; correct, that's not yet registered?</p> <p>15 A. That's true.</p> <p>16 Q. Now, it uses a circle R; right?</p> <p>17 A. I see that there.</p> <p>18 Q. Is that a correct use of the circle R?</p> <p>19 A. It wouldn't be by what we do unless this</p> <p>20 was from Germany or something. It looks like it's</p> <p>21 our homepage. I don't know what date that was or</p> <p>22 how far back it was.</p> <p style="text-align: right;">Page 265</p>

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<p>1 Q. This was printed out on October 22.</p> <p>2 A. I saw that there.</p> <p>3 Q. This is from Glidewell's own website.</p> <p>4 A. Oh, okay. Constantly having to look at</p> <p>5 this stuff.</p> <p>6 Q. So you agree that's not a proper use of</p> <p>7 the circle R?</p> <p>8 A. No, no, we're not doing it. We're not</p> <p>9 doing it for that.</p> <p>10 Q. What do you mean "you're not doing it"?</p> <p>11 A. Well, the companies use that all the time</p> <p>12 when they have a circle R in Europe, and they use</p> <p>13 their circle R trademark. We're not doing that.</p> <p>14 We're just keeping it TM.</p> <p>15 Q. So it should say TM?</p> <p>16 A. By the way we're doing it, true, it</p> <p>17 should be TM on that.</p> <p>18 Q. Let me show you what's been previously</p> <p>19 marked Exhibit 98. This is another printout from</p> <p>20 Glidewell Laboratories' website. This is for a</p> <p>21 BruxZir mill. I think you testified earlier you</p> <p>22 don't have a trademark registration pending for</p> <p style="text-align: right;">Page 266</p>	<p>1 you have with them to use the BruxZir name --</p> <p>2 A. True.</p> <p>3 Q. -- with their crowns; correct?</p> <p>4 A. That's true just like if they used</p> <p>5 someone else's material.</p> <p>6 Q. They can use a circle R with that is your</p> <p>7 understanding because it's the crowns that they're</p> <p>8 making that have the BruxZir name on it?</p> <p>9 A. Exactly. Just like if they provided an</p> <p>10 IPS e.max crown or Lava crown, same sort of thing.</p> <p>11 Q. And that would be -- I'm sorry, the</p> <p>12 registration is Class 10; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. It's in connection with Class 10</p> <p>15 that the authorized labs are using the circle R;</p> <p>16 correct?</p> <p>17 A. That's true.</p> <p>18 Q. Okay. Well, thank you very much,</p> <p>19 Mr. Allred. I appreciate your time. I have no</p> <p>20 further questions.</p> <p>21 MR. TACHNER: I have no questions.</p> <p>22 MR. JANKOWSKI: Off the record.</p> <p style="text-align: right;">Page 268</p>
<p>1 BruxZir in connection with this type of equipment;</p> <p>2 correct?</p> <p>3 A. That would be incorrect too. That should</p> <p>4 be a TM.</p> <p>5 Q. That should be a TM as well.</p> <p>6 Now finally let me show you what's been</p> <p>7 labeled previously as Exhibit 99. This is also</p> <p>8 printed out from the website associated with</p> <p>9 authorized BruxZir laboratories. Take a look at</p> <p>10 that. Here we see the use of the circle R again?</p> <p>11 A. True.</p> <p>12 Q. Is this the proper use of the circle R?</p> <p>13 A. I think we have been using it for that</p> <p>14 because it does stand for providing the</p> <p>15 all-zirconia crowns which we do have the trademark</p> <p>16 on.</p> <p>17 Q. Right.</p> <p>18 What you're mostly doing with your</p> <p>19 authorized labs are providing the milling blanks</p> <p>20 for them to make the crowns themselves?</p> <p>21 A. That's true.</p> <p>22 Q. So they're allowed under the agreement</p> <p style="text-align: right;">Page 267</p>	<p>1 (At 5:15 p.m. the deposition of Keith</p> <p>2 Allred was concluded.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 269</p>

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<p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, LISA MOSKOWITZ, CSR No. 10816, RPR,</p> <p>4 CLR, in and for the State of California, do hereby</p> <p>5 certify:</p> <p>6 That, prior to being examined, the witness</p> <p>7 named in the foregoing deposition was by me duly</p> <p>8 sworn to testify the truth, the whole truth and</p> <p>9 nothing but the truth;</p> <p>10 That said deposition was taken down by me</p> <p>11 in shorthand at the time and place therein named</p> <p>12 and thereafter reduced to typewriting under my</p> <p>13 direction, and the same is true, correct, and</p> <p>14 complete transcript of said proceedings;</p> <p>15 I further certify that I am not interested</p> <p>16 in the event of the action.</p> <p>17 Witness my hand this 1st day of November,</p> <p>18 2012.</p> <p>19</p> <p>20 _____</p> <p>21 Certified Shorthand</p> <p>22 Reporter for the</p> <p>State of California</p> <p>Page 270</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1726 M Street NW, Suite 1010</p> <p>3 Washington, D.C. 20036</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 SIGNATURE PAGE</p> <p>7</p> <p>8</p> <p>9 Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc</p> <p>10 Witness Name: Keith Allred</p> <p>11 Deposition Date: October 25, 2012</p> <p>12</p> <p>13 I do hereby acknowledge that I have read</p> <p>14 and examined the foregoing pages</p> <p>15 of the transcript of my deposition and that:</p> <p>16</p> <p>17 (Check appropriate box):</p> <p>18 () The same is a true, correct and</p> <p>19 complete transcription of the answers given by</p> <p>20 me to the questions therein recorded.</p> <p>21 () Except for the changes noted in the</p> <p>22 attached Errata Sheet, the same is a true,</p> <p>correct and complete transcription of the</p> <p>answers given by me to the questions therein</p> <p>recorded.</p> <p>DATE WITNESS SIGNATURE</p> <p>Page 272</p>
<p>1 Keith Allred c/o</p> <p>2 Leonard Tachner PLC</p> <p>3 17961 Sky Park Circle, Suite 38-E</p> <p>4 Irvine, CA 92614-6364</p> <p>5</p> <p>6 Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.</p> <p>7 Date of deposition: October 25, 2012</p> <p>8 Deponent: Keith Allred</p> <p>9</p> <p>10 Please be advised that the transcript in the above</p> <p>11 referenced matter is now complete and ready for signature.</p> <p>12 The deponent may come to this office to sign the transcript,</p> <p>13 a copy may be purchased for the witness to review and sign,</p> <p>14 or the deponent and/or counsel may waive the option of signing.</p> <p>15 Please advise us of the option selected.</p> <p>16 Please forward the errata sheet and the original signed</p> <p>17 signature page to counsel noticing the deposition, noting the applicable</p> <p>18 time period allowed for such by the governing Rules of Procedure.</p> <p>19 If you have any questions, please do not hesitate to call our office at</p> <p>20 (202)-232-0646.</p> <p>21</p> <p>22 Sincerely,</p> <p>Digital Evidence Group</p> <p>Copyright 2012 Digital Evidence Group</p> <p>Copying is forbidden, including electronically, absent express written consent.</p> <p>Page 271</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1726 M Street NW, Suite 1010</p> <p>3 Washington, D.C. 20036</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 E R R A T A S H E E T</p> <p>7</p> <p>8 Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc</p> <p>9 Witness Name: Keith Allred</p> <p>10 Deposition Date: October 25, 2012</p> <p>11 Page No. Line No. Change</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Signature Date</p> <p>Page 273</p>

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REPORTER'S CERTIFICATE

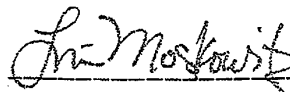
I, LISA MOSKOWITZ, CSR No. 10816, RPR,
CLR, in and for the State of California, do hereby
certify:

That, prior to being examined, the witness
named in the foregoing deposition was by me duly
sworn to testify the truth, the whole truth and
nothing but the truth;

That said deposition was taken down by me
in shorthand at the time and place therein named
and thereafter reduced to typewriting under my
direction, and the same is true, correct, and
complete transcript of said proceedings;

I further certify that I am not interested
in the event of the action.

Witness my hand this 1st day of November,
2012.



Certified Shorthand

Reporter for the

State of California